

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL NO. 09-733-ALL

v

JONATHAN COBB, DAVID COBB,  
and DARREN MACKLIN, : Philadelphia, Pennsylvania  
: June 25, 2010  
Defendants : 9:23 a.m.

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE EDUARDO C. ROBRENO  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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(The following was heard in open court at  
9:23 a.m.)

3 THE COURT: Okay. Please be seated. Let's  
4 bring the jury in.

5 (Pause in proceedings.)

6 MS. MARSTON: Good morning, Your Honor.

7 (Jury in, 9:24 a.m.)

8                   THE COURT: Good morning. Please be seated.  
9 We're ready to complete the closing statements at this  
10 time. Ms. Grasso, please.

11 MS. GRASSO: Thank you, Your Honor.

12 (Pause in proceedings.)

13 MS. GRASSO: Good morning, ladies and  
14 gentlemen. This is the last time I get to speak to  
15 you. I think you know that from His Honor explaining  
16 to you the order of the closing arguments.

On behalf of myself and on behalf of Darren Macklin we would like to thank you for your service, for being here, taking the time out from your busy schedules to not only be here, as you're required to be here, but to pay attention, which I know all of you have been doing throughout the course of this trial.

When you go back to deliberate I'm confident  
that you're going to uphold your oath as jurors and  
keep an open mind, listen to what your fellow jurors

## Defendant D. Macklin's Closing Argument

4

1 have to say, and decide the facts amongst yourselves,  
2 and then apply the law as His Honor gives it to you  
3 shortly in his instruction.

4 I want to remind you a little bit about some  
5 of the law that you're going to hear from His Honor,  
6 and what His Honor tells you on the law is what  
7 controls.

8 But I want to remind you of a few things on  
9 the law that I pointed out to you in the beginning of  
10 this case, and that is that all of the defendants,  
11 including Darren Macklin, are presumed innocent.

12 The fact that they have been indicted and the  
13 fact that Darren Macklin has been charged with a crime  
14 is absolutely evidence of nothing. He stands in front  
15 of you cloaked, as we say, with the presumption of  
16 innocence.

17 I like to think of that presumption of  
18 innocence as a wall that surrounds him and protects  
19 him, as it would protect each and every one of you or  
20 someone you know if they were charged with a crime.

21 That wall, that presumption of innocence  
22 remains unless and until the government proves each and  
23 every element of the crimes charged beyond a reasonable  
24 doubt.

25 The burden of proof to prove the charges

## Defendant D. Macklin's Closing Argument

5

1 beyond a reasonable doubt, as I told you before, rests  
2 solely with this table, the government team. There is  
3 absolutely no burden over here.

4 You heard a lot of witnesses from the  
5 government. You didn't hear any witnesses from the  
6 defense side. The fact that you heard a large amount  
7 of witnesses from the government and none from the  
8 defense is not something that you can hold against any  
9 of the defendants, and His Honor will instruct you that  
10 the number of witnesses doesn't matter and, again, you  
11 don't have to hear one single word from the defense  
12 side. The presumption of innocence, as I explained, is  
13 like a wall, and that wall remains until they prove  
14 those charges beyond a reasonable doubt.

15 His Honor will instruct you on reasonable  
16 doubt, but I would suggest to you and he's going to  
17 explain to you that it's the type of doubt that would  
18 make you pause or hesitate in a matter of importance in  
19 your life.

20 Common examples are getting married, deciding  
21 to buy a house, those sorts of things. If it's  
22 something that says hey, I'm not sure I want to do this  
23 or did it really happen this way, those I would suggest  
24 to you are things that are reasonable doubt, and there  
25 is a ton of reasonable doubt in this case with regard

## Defendant D. Macklin's Closing Argument

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1 to Darren Macklin, a ton.

2 The charges that the government needs to  
3 prove, and they went over them a little bit and His  
4 Honor will go over them with you in great detail,  
5 essentially boil down to conspiracy, which is an  
6 agreement. There has to be some sort of agreement.

7 His Honor will tell you that it doesn't have  
8 to be a spoken agreement, doesn't say hey, we agree to  
9 go out and sell drugs together. There's no evidence of  
10 that and they don't need that.

11 But they need something that proves that  
12 there was an agreement to go out and do something  
13 collectively together. There is no evidence of that in  
14 this case with regard to Darren Macklin.

15 With regard to possession to distribute  
16 cocaine, that's what the object of the conspiracy was.  
17 They have to agree to have gone out to possess the  
18 cocaine with the intent to distribute and,  
19 specifically, you are being asked to determine that  
20 there was five hundred more grams of cocaine that was  
21 the object of that conspiracy. There's absolutely no  
22 evidence as to Darren Macklin regarding five hundred  
23 grams of cocaine, no evidence.

24 There's been lots of names used in this case  
25 by the government, particularly in argument. And,

## Defendant D. Macklin's Closing Argument

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1 again, argument is not evidence. The Judge will remind  
2 you of that.

3 Darren Macklin has been called lots of things  
4 during the course of this trial. He's been called  
5 "Jonathan Cobb's partner in crime." He's been called  
6 his "right-hand man," he's been called his "point  
7 person," and he's been called "Sporty." And the only  
8 thing that the government has proven to you that he's  
9 Sporty. That's it. None of those other names apply to  
10 him. This is Sporty.

11 If you met him at the corner store in Chester  
12 and somebody said hey, who's that, they'd say that's  
13 Sporty. That's his name. That's his nickname. That's  
14 been his name. That's the only evidence of the names  
15 that you have heard that the government has proven.

16 They haven't proven that he's a right-hand  
17 man, they haven't proven that he's a partner or he's a  
18 point person. None of that has been proven in this  
19 case.

20 If you think back about the evidence, and I'm  
21 going to go over it and, unfortunately, I am going to  
22 have to do it in some detail. I'm sure you are  
23 probably kind of tired of it, but I do need to do that  
24 obviously.

25 Think about the evidence and the way things

## Defendant D. Macklin's Closing Argument

8

1 came in and what the officers learned and when they  
2 learned it and who were the targets of their  
3 investigation. I submit to you that if Darren Macklin  
4 was not in an Impala on October 20th, 2009. He  
5 wouldn't be in this courtroom.

6 It wasn't until that point in time that they  
7 knew who he was, and then they started to look back and  
8 say oh, well, maybe this fits, maybe he's been involved  
9 all along, we just didn't know it.

10 He's not been a target of ours, nobody's ever  
11 talked to us about him, we don't have any surveillance  
12 on him, but he was there so we better go back and check  
13 and see what's going on, and they can do that. I mean  
14 law enforcement can do that. There's nothing wrong  
15 with that.

16 Take, for example, if there's a homicide, the  
17 government's not there watching on a wiretap or they  
18 don't have video of it usually, and they can go back  
19 and reconstruct evidence. That's perfectly legitimate.

20 But I ask you why did they have to do it in  
21 this case because they didn't have anything on him.  
22 And they have gone back and tried to submit to you  
23 evidence that they believe shows a conspiracy to  
24 possess and distribute cocaine, and there is no  
25 evidence of that, ladies and gentlemen.

## Defendant D. Macklin's Closing Argument

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1           They want you to think that there is and they  
 2 have put on evidence of that and I'm going to go  
 3 through all that evidence. But it's not there, ladies  
 4 and gentlemen.

5           What do we know about the investigation? We  
 6 know that the investigation started approximately ten  
 7 months before September 29, 2009 when -- well, actually  
 8 September 12th they get the pen register. And we know  
 9 at about ten months before that, which is all the way  
 10 back in December of '08, they're doing ordinary type of  
 11 law enforcement work out in Chester looking for drug  
 12 activity.

13          The targets of that investigation back in  
 14 December of '08 everyone agrees, every one of the  
 15 officers that I asked, every officer who testified, had  
 16 nothing to do with Darren Macklin. There's no doubt  
 17 about that. Nothing.

18          That initial investigation leads up to them  
 19 getting the pen register for the target phone, which,  
 20 of course, has nothing to do with Darren Macklin. It's  
 21 not his phone. We know that.

22          They get the pen register and then based upon  
 23 the pen register, they get the Title III. Title III,  
 24 and I asked Agent Church about this, I asked Agent  
 25 Morrow about this, I'm pretty sure that Officer Tyler

## Defendant D. Macklin's Closing Argument 10

1 was asked about it. And Title III, you have seen it  
2 waived around. I'm not sure if it's an actual exhibit  
3 or not, bBut it's sixty pages, and it has a fair amount  
4 of names in it that were targets of the investigation.

5 And it also identifies individuals that they  
6 have learned information from. And I asked Agent  
7 Church about it. Of those twenty or so names, give or  
8 take, obviously it's not an exact number, but give or  
9 take, there is no mention of Darren Macklin, none,  
10 nTiltone whatsoever.

11 What do they do with the Title III? Well,  
12 they have the Title III now and we know that they're  
13 sitting in a room and they're listening to  
14 conversations, and they can only listened to  
15 conversations that are deemed pertinent because that's  
16 all the law allows them to do.

17 Based upon that, they have surveillance setup  
18 on the street and they have -- we heard from I believe  
19 it was Sergeant Boudwin that they had four or five  
20 officers out there surveilling from approximately 10:00  
21 a.m. to 12:00 p.m. not every day, but on most days when  
22 they had the wire setup.

23 What do they learn from the wire? And what  
24 do they learn from the pen register? Well, they  
25 learned the phone numbers of other people, and they

## Defendant D. Macklin's Closing Argument

11

1 suspect, based upon what they listen to that other  
2 people are involved in the drug sales or the drug  
3 purchases or whatever the case may be, and so they go  
4 out and they get the pen registers, the information  
5 regarding those cellular telephones, and they do that  
6 for a number of people.

7 They didn't do it for Darren Macklin. They  
8 had the wire setup. They're listening to telephone  
9 calls. They know that that number is calling Jonathan  
10 Cobb's phone.

11 We know from one of the final exhibits that  
12 the government displayed that there was forty-six calls  
13 going in and forty-six outgoing calls from that phone.  
14 They don't get that pen register. Why? Because  
15 they're not concerned.

16 They don't believe that there's any unlawful  
17 activity with regard to the number that belongs to  
18 Darren Macklin. That's why they didn't do it, and if  
19 they thought there was, they would have.

20 The North Philadelphia supplier, the West  
21 Philadelphia supplier, they believed that there was  
22 drug activity going on in those conversations between  
23 those two phones. They went out and they got those pen  
24 registers as the investigation was going on. They  
25 didn't do that for Darren Macklin. They weren't

## Defendant D. Macklin's Closing Argument

12

1 concerned.

2 Surveillance is up, I think we went over this  
3 point a lot during the course of the trial, and you're  
4 probably sick, of it, they had the pole camera up.  
5 They had officers sitting in vehicles who had the  
6 ability to take photographs.

7 Do we expect them to take photographs the  
8 entire time they're sitting there? No. Do they have  
9 an obligation? Are they concerned about protecting,  
10 you know, they're location and remaining unsuspected by  
11 whoever is out there? Yes. But it is one hundred  
12 percent clear there is no photographs or surveillance  
13 of Darren Macklin.

14 Forget the photographs. All the officers who  
15 testified said Detective Newell -- Detective Newell  
16 didn't know until the day of the stop. He says after  
17 the stop I think I may have seen him out there before  
18 when I was surveilling, but he didn't put two and two  
19 together until he saw him when he was in custody in a  
20 police car on October 20th.

21 The same thing with Sergeant Boudwin. He  
22 didn't see him. He didn't know him. We had one --  
23 testimony from I think it was Detective Newell who said  
24 at some point that he had seen Darren -- or I'm sorry,  
25 Jonathan Cobb during the course of his surveillance

## Defendant D. Macklin's Closing Argument

13

1 over one hundred times or around one hundred times, and  
 2 this was brought out on redirect by the government.

3 Well, if Darren Macklin is his right-hand man  
 4 and he's seen him about one hundred times during the  
 5 course of his surveillance, he would have told you that  
 6 in the one hundred times he saw him his right-hand man  
 7 was with him. He didn't tell you that. There's no  
 8 evidence of that. He wasn't there. He's not his  
 9 right-hand man.

10 All of a sudden on the 20th he becomes the  
 11 right-hand man, the point person. Nothing before that.  
 12 On the 20th they say that he's the point person to go  
 13 out and help facilitate what they believe to be the  
 14 purchase of the kilo from the North Philadelphia  
 15 supplier.

16 But, they tell you there's been trips before  
 17 that where they believe that Jonathan Cobb has gone and  
 18 met with either the West Philadelphia supplier or the  
 19 North Philadelphia supplier. And they tried to surveil  
 20 him on those occasions, but surveillance wasn't  
 21 successful.

22 There's no testimony that Darren Macklin was  
 23 with him on any of the occasions. In fact, the  
 24 evidence shows that he wasn't. They don't have any  
 25 proof of that. There's no suggestion that he was. But

## Defendant D. Macklin's Closing Argument

14

1 all of a sudden on the 20th he's got to be the point  
2 person, he's got to be there. Some point person.

3           What do we know that he did on the 20th? He  
4 picked up the phone when David Cobb called and said,  
5 "We're at the Mrs.' crib." I think there were two  
6 calls. Both times he says, "We're at the Mrs.' crib."  
7 That's it. That's the evidence against him for the  
8 20th. "We're at the Mrs.' crib."

9           And then, of course, he's picked up going  
10 into those vehicles, and I'm going to get into that  
11 later. But does that makes him the point person.  
12 There's absolutely one hundred percent reasonable doubt  
13 when you look at those pieces of evidence, ladies and  
14 gentlemen.

15           Officer Tyler. Most of Officer Tyler's  
16 testimony was to interpret the tapes for you of the or  
17 the audio. Again, the transcripts that you see on the  
18 screen, they're not evidence, they're just an aid. We  
19 know that they were prepared by Agent Church. And if  
20 what you hear is different than what you see on the  
21 screen, then it's what you hear that controls.

22           Officer Tyler tried to interpret for you some  
23 of the things that he believed the government heard  
24 that relates to drug activity. He said that the  
25 nicknames, they used nicknames because they don't want

## Defendant D. Macklin's Closing Argument

15

1 to be detected.

2 Well, everybody in this case has a nickname.  
3 Everybody. And they didn't make any qualms about using  
4 it on the telephone, even though, according to Officer  
5 Tyler, if they're drug dealers, they suspect that  
6 people are listening to their phones so they don't want  
7 to tip them off. So they wouldn't be using their  
8 nicknames. We hear Sporty's name all the time. That's  
9 his name. No crime in that. It's not indicative of  
10 anything.

11 Officer Tyler tells you -- interprets things  
12 for you, it's a Chess game, it's a drug deal. If it's  
13 first shift, they're referring to the fact that they  
14 know that the cops are out there on their first shift.  
15 If it said bowling, well, they must be bowling because  
16 he didn't tell us that bowling is equivalent of  
17 anything that has anything to do with a drug deal.

18 Quizzy. Officer Tyler tells us Quizzy,  
19 that's a quarter ounce of cocaine. The officers are  
20 setup listening to these tapes believing that is --  
21 there is drug-related conversations. They are hearing  
22 what they want to hear.

23 I'm not suggesting to you that they're coming  
24 in here and lying to you, but there's a context. And  
25 when you -- you know when you are expecting something

## Defendant D. Macklin's Closing Argument

16

1 that sometimes it happens differently than you expect  
 2 it to. I think the officers at some point were  
 3 listening to things expecting them to mean things that  
 4 they just simply did not in reality mean.

5 We don't have anyone in this case -- there's  
 6 no evidence in this case to tell you that a quizzy  
 7 means a quarter ounce, other than Officer Tyler.  
 8 There's no evidence been presented of that.

9 There's plenty of things regarding -- that  
 10 are either on the tapes or that we have heard testimony  
 11 about that is completely innocent behavior. Bowling,  
 12 for example, we haven't heard anything that bowling is  
 13 anything other than bowling.

14 We know that Jonathan Cobb rehabs houses on  
 15 Jeffrey Street, on Norris Street, and we know that he  
 16 uses drywall and spackle and tape and he gives tenants  
 17 keys and he collects rent and he's fixing up the house  
 18 on Jeffrey Street and he's fixing up the house on  
 19 Norris Street and there are lots of people around on  
 20 the occasions that he is fixing up the houses with him.  
 21 Completely innocent behavior.

22 We know all that about the fixing up of the  
 23 houses from the government's witnesses. We know that  
 24 from Officer Tyler, we know that from Donna Hill, we  
 25 know that from Angela Strand, and we know that from

## Defendant D. Macklin's Closing Argument

17

1 Dawn Germany. They all told us that.

2           Officer Tyler was qualified as an expert, and  
3 clearly he has extensive experience in law enforcement.  
4 And we know that he's never been qualified on drug  
5 lingo before. This was the first time. And that  
6 doesn't mean that he shouldn't have been qualified  
7 because he was.

8           But the fact that he's been qualified as an  
9 expert doesn't mean that you have to accept his  
10 testimony as true. You have to listen to what he told  
11 you in light of the fact that he has this extensive  
12 experience, but you have to weigh that testimony in  
13 light of what you've heard from the other witnesses,  
14 from the other evidence, from what you actually heard  
15 on the transcript and what you think the transcript  
16 means or could mean, and clearly there are millions of  
17 things that some of the words that have been said on  
18 the transcripts could mean. You don't have to accept  
19 what Officer Tyler has told you that they mean.

20           I would submit to you that there is at least  
21 two occasions that Officer Tyler's interpretation of  
22 what was said on the transcripts was wrong. And I'm  
23 going to give you two examples.

24           The -- both of them have to pertain --  
25 there's a difference between what Officer Tyler told us

## Defendant D. Macklin's Closing Argument

18

1 and what Anthony Minor told us. And, again, this is  
 2 coming from my recollection as I listened to the trial.  
 3 The Judge will instruct you that your recollection  
 4 controls, so if you remember something differently,  
 5 then your recollection controls.

6           If I'm not mistaken, Officer Tyler told us  
 7 that a dollar means one hundred dollars. Anthony Minor  
 8 told us a dollar means an ounce. More importantly, and  
 9 this is the one I believe I have one hundred percent  
 10 certain in terms of my recollection, Officer Tyler said  
 11 -- remember that conversation between Jonathan Cobb and  
 12 Anthony Minor where Jonathan Cobb wasn't around and  
 13 he's telling Anthony Minor that you could hit my  
 14 brother up or whatever he says.

15           Officer Tyler says that when Jonathan Cobb  
 16 says, "He ain't gonna do it for what I do it for,"  
 17 Officer Tyler says that Jonathan Cobb is referring to  
 18 the price. He's not going to do it for the same price.

19           Well, Anthony Minor tells us when he says  
 20 that "He ain't gonna do it the way I do it for you" he  
 21 means he ain't gonna front it to you. And I would  
 22 suggest to you that what Anthony Minor said probably  
 23 makes more sense, at least in light of what Anthony  
 24 Minor told us, which is that he always got his drugs  
 25 when they were fronted to him.

## Defendant D. Macklin's Closing Argument

19

1                   So there's an example of Officer Tyler  
2 thinking he knows what it means basing it upon his  
3 experience, but he got it wrong. I would suggest to  
4 you that there's other times when he's gotten it wrong  
5 or possibly has gotten it wrong. Is that doubt? Is  
6 that reasonable doubt? Yes, it is, ladies and  
7 gentlemen.

8                   The North Philadelphia supplier and the West  
9 Philadelphia supplier. We know that the government  
10 made up those terms based upon the calls that were  
11 going back and forth between the target phone and these  
12 telephone numbers and the cell sites that they would  
13 hit.

14                  We never pinpointed or the government never  
15 presented any evidence that they pinpointed where the  
16 North Philadelphia supplier or the West Philadelphia  
17 supplier was stationed at, where their house was, et  
18 cetera. We don't know anything about that. There's  
19 been no evidence of that.

20                  There's absolutely no evidence of any  
21 conversations between Sporty, Darren Macklin, and the  
22 Wester Philadelphia supplier and the North Philadelphia  
23 supplier, and if there was, you would have heard it.  
24 There's nothing in the pen registers.

25                  They have his cell phone that they presented

## Defendant D. Macklin's Closing Argument

20

1 to you, and we all are familiar with cell phones. You  
2 can go into contacts. You can look up a lot of  
3 information when you have somebody's cell phone. They  
4 had the physical cell phone. They had the pen  
5 register. Absolutely no contact between the cell phone  
6 of Darren Macklin and the would be Philadelphia  
7 supplier and the West Philadelphia supplier.

8 And, again, there's no evidence that he ever  
9 went along for any of these purchases to the suppliers  
10 except for the fact that he happens to be in the car on  
11 the 20th, and, again, I would submit to you that's why  
12 he's sitting here today.

13 There is no evidence, absolutely no evidence,  
14 that any buyer who allegedly purchased drugs from  
15 someone purchased them from Darren Macklin. No one has  
16 ever put drugs in Darren Macklin's hand. I think  
17 that's one hundred percent clear.

18 I kept going over it and over it every time  
19 there was a witness on the stand. No one bought drugs  
20 from Darren Macklin in this case. No one. No one even  
21 saw him holding drugs. No one even saw him going to a  
22 car where they believe drugs were stashed. Nobody even  
23 saw him going to a location in an alleyway where they  
24 believe drugs were stashed. There's no evidence of  
25 that, absolutely none.

## Defendant D. Macklin's Closing Argument

21

1                   Kim Voyer, her name was mentioned, Joseph  
2 Curry, Angela Strand, Donna Hill, Shaky Bakey, Anthony  
3 Minor, none of them said that Darren Macklin had drugs.  
4 None of them.

5                   Any time someone wants to get drugs from  
6 Jonathan Cobb and he's not around they don't get sent  
7 to Darren Macklin, the right-hand man, the partner in  
8 crime, not one. Not one of those persons when they  
9 wanted to get in touch with Jonathan Cobb did they ever  
10 get directed to Darren Macklin, not once.

11                  I'm going to hit them all head on.  
12 Unfortunately, I'm going to go through them. I'm not  
13 going to play them for you, but I'm going to go through  
14 all of them because there's not that many.

15                  We know that there's forty-six ingoing and  
16 forty-six outgoing between the two phone calls. We  
17 don't know the time frame. All we know is that it's  
18 from some point that the pen register is setup on  
19 September the 12th, and at some point when it's shut  
20 down, I think it was October 28th they said, some time  
21 after the 20th. And I have a total of one, two, three,  
22 four, five, six dates that they played pertinent calls,  
23 calls that they believe to be drug-related that are  
24 evidence against Darren Macklin to convict him for what  
25 he's been charged. Six days.

## Defendant D. Macklin's Closing Argument

22

1           I think on the 16th there's somewhere around  
 2 five or seven calls altogether. I'm going to go  
 3 through them. Unfortunately, you're probably sick of  
 4 them, but I'm going to go through them, all of them.

5           So we have October 1st, October 2nd, October  
 6 5th, the 16th, the 19th, and the 20th. October 1st.  
 7 Well, that's the quizzzy. That's the day he says --  
 8 Darren Macklin says and I don't have it with me, I'm  
 9 sorry, get him a quizzzy, or something like that.

10          Well, what do we know? We know that the only  
 11 person who ever testified that a quizzzy is cocaine is  
 12 Officer Tyler, and we know that he's made mistakes  
 13 before. I would suggest to you that he's made mistakes  
 14 before interpreting language, and I have just given you  
 15 the example of that.

16          We don't know where Jonathan Cobb is. We  
 17 don't know where Darren Macklin is when he says get him  
 18 a quizzzy. We don't know if somebody ever met up with  
 19 Jonathan Cobb to get a quizzzy.

20          We certainly don't have any evidence that  
 21 Darren Macklin met up with somebody to give him a  
 22 quizzzy, to give him a quarter ounce. There's  
 23 absolutely no evidence of that.

24          They are arguing to you that that means that  
 25 that was setting up a drug transaction. Are you saying

## Defendant D. Macklin's Closing Argument

23

1 to yourself based upon what you've heard, based upon  
 2 what you know, I'm not convinced. Could be, might not  
 3 be. It's reasonable doubt.

4 October 2nd. And I don't think the  
 5 government even argued this in their closing because I  
 6 guess they don't think it's important, but I'm going to  
 7 hit on it.

8 That's the conversation where Darren Macklin  
 9 says to Jonathan Cobb, "Shaky Bakey is here." Well,  
 10 that's a drug deal right there. He's telling him Shaky  
 11 Bakey is here. Well, we don't know who Shaky Bakey is  
 12 from the evidence that's been presented.

13 Shaky Bakey could be there for a lot of  
 14 things from what we know from the evidence. All we  
 15 know is that Darren Macklin says, "Shaky Bakey is  
 16 here." Not evidence of a drug deal as far as I'm  
 17 concerned.

18 October 5th. This is the conversations  
 19 between Jonathan Cobb and Darren Macklin where Jonathan  
 20 Cobb uses words that Officer Tyler says are related to  
 21 covering up their drug activity. Jonathan Cobb says  
 22 first shift -- hold on one second.

23 (Pause in proceedings.)

24 MS. GRASSO: Jonathan Cobb says, "Yeah, you  
 25 know they're on first shift." Darren Macklin says,

## Defendant D. Macklin's Closing Argument

24

1 "Huh?" with a question mark, and there is a question  
2 mark in the transcript actually. Jonathan Cobb says,  
3 "Yeah, they're on first shift. I'm when you get there  
4 free, hold on. Yo is the bull." Darren Macklin, can't  
5 understand what he says.

6 Jonathan Cobb, "Down here in the purple car  
7 waiting, that purple and blue car. Darren Macklin,  
8 "Nah, nah." And we don't have any evidence that any of  
9 the surveillance officers were in a blue and purple  
10 car. So we don't know what the conversation is about,  
11 ladies and gentlemen.

12 They can suggest to you what they think it's  
13 about, but, again, we don't know what it's about, and,  
14 again, the words related to what they believe to be  
15 discussing the fact that watch out, law enforcement is  
16 out there, those are words that are spoken by Jonathan  
17 Cobb, not by Darren Macklin. In fact, he says, "Huh"  
18 with a question mark.

19 Now, in the government's closing, and correct  
20 me if I'm wrong, you'll do that when you go back to  
21 deliberate, I believe the government referred to calls  
22 on October 5th, Government's Exhibits 97 and 98, and I  
23 just read to you 98, which is the one about the purple  
24 car.

25 97 I'm going to read to you in a second. But

## Defendant D. Macklin's Closing Argument

25

1 I think the government when they closed, and I would  
2 imagine that they made a mistake, said something about  
3 that that conversation said "bring two," that Darren  
4 Macklin said "bring two." Well, when he said that in  
5 his closing and I said to myself, "What?" because I  
6 didn't remember that at all. I had no recollection of  
7 that.

8 I went back and I looked at the calls for  
9 that day, and what the calls says on Government's  
10 Exhibit 97, Jonathan Cobb answers the phone, "Yo."  
11 Darren Macklin, "What's up, big dog?" Jonathan Cobb,  
12 "Man, I'll be right down in like two minutes. I'll be  
13 right there." Darren Macklin, "Two, all right, yeah,  
14 yo." It doesn't say bring two, he says he'll be down  
15 in two minutes. And then he confirms "two, yeah, two."

16 Nobody ever said bring two to suggest that it  
17 means bring two whatever of cocaine. I don't know what  
18 that could be, and we haven't heard any testimony about  
19 that.

20 Quite frankly, I think he just made a  
21 mistake, but in any event, there is absolutely no way  
22 to argue that that says bring two. I just read it to  
23 you verbatim, so that's the call of October 5th, again,  
24 nothing related to drug conversation in either of those  
25 calls.

## Defendant D. Macklin's Closing Argument

26

1                   October 6th. This is a call not between --  
2 it doesn't involve Darren Macklin actually. It's just  
3 between Jonathan Cobb and David Cobb, and it's  
4 Government's Exhibit 100. This is the call where  
5 they're talking about drywall. And I'm just going to  
6 read you some relevant portions.

7                   Jonathan Cobb says, "I might need you to pick  
8 him up so he can get a little piece of drywall from  
9 around my crib, one of the cribs on Jeffrey Street.  
10 I -- so he -- I got plenty of drywall laying right  
11 outside, so if not, Sporty got a key to get inside to  
12 get the other drywall."

13                  Then later in that same conversation, it's a  
14 pretty lengthy one, Jonathan Cobb says, "The drywall  
15 laying right outside on the right side of the house,"  
16 and then he talks about getting the spackle and the  
17 tape.

18                  Well, nobody's told you that has anything to  
19 do with drugs because it doesn't. But what do we know  
20 from that? We know that everything that we've already  
21 been confirmed by the other witnesses, which is he's  
22 fixing up houses, and Darren Macklin's got the key to  
23 help them get in the houses to get the drywall, to get  
24 them the supplies to fix up the houses because he's  
25 helping them fix up the houses. That's what we know

## Defendant D. Macklin's Closing Argument

27

1 from that call.

2                   October 16th. That's the day where Jonathan  
3 Cobb uses, "You got to fall out." Again, the words  
4 "fall out" and "it's real wet out here" they're not  
5 Darren Macklin's words.

6                   That begins the whole series of conversations  
7 that go back between Jonathan Cobb and Darren Macklin  
8 with regard to Anthony Minor and getting the money, the  
9 money that was apparently short that Officer Tyler  
10 tells you that it was short for money for drugs that  
11 were fronted by Jonathan Cobb to Anthony Minor and then  
12 Darren Macklin is picking up the money.

13                  Well, what do we know about that? We know  
14 what Darren Macklin's words are. We heard them. "I  
15 didn't count it. He didn't tell me nothing. I never  
16 touched it. What was supposed to be the total? It had  
17 a rubberband on it and I left it like that."

18                  Jonathan Cobb when he's having a conversation  
19 with Anthony Minor trying to figure out who was short,  
20 what it was short, he says, "Man, I trust him. He's  
21 had thirty to forty stacks for me." They tell you that  
22 thirty to forty stacks means thirty to forty thousand  
23 dollars.

24                  Do we have any evidence that Darren Macklin  
25 has been holding thousands of dollars for anybody? Any

## Defendant D. Macklin's Closing Argument

28

1 evidence that anybody's ever seen him with thousands of  
2 dollars? There's no evidence of that in this case.

3 He collected the money. Is there any  
4 evidence in this case as to why he collected that  
5 money? I would suggest to you that the government has  
6 not proven beyond a reasonable doubt regarding what  
7 that was about.

8 October 19th. And we're getting closer to  
9 the day of the arrest. Darren Macklin answers the  
10 phone from Joseph Ward. And you probably remember the  
11 call. Joseph Ward says, "Yo -- " he thinks it's Darren  
12 -- Joseph Ward thinks it's Jonathan Cobb who answers  
13 the phone, and Darren says, "No, it's not him. He's  
14 not here right now."

15 Joseph Ward says, "I'm trying to catch up  
16 with him." Well, if Darren Macklin is Jonathan Cobb's  
17 right-hand man, if he's his partner in crime, if he's  
18 the point person, and Joseph Ward is looking to buy  
19 drugs, don't you think Darren Macklin would have said,  
20 you know, I can take care of it, what do you need, how  
21 much do you want, do you want this, you want that. He  
22 doesn't do that.

23 Obviously, Jonathan Cobb comes near where he  
24 is on the phone at some point and he says, "Here he  
25 is," and he hands him the phone. Otherwise, I think it

## Defendant D. Macklin's Closing Argument

29

1 was perfectly clear that that call was going to end,  
 2 that Joseph Ward and Darren Macklin were not going to  
 3 have a conversation because Joseph Ward didn't want to  
 4 talk to Darren Macklin. He wanted to talk to Jonathan  
 5 Cobb. He's no partner in crime. He's no right-hand  
 6 man.

7           Same thing on October 19th. Jonathan Cobb  
 8 and David Cobb have a conversation and this is after  
 9 the conversation with Joseph Ward where presumably  
 10 Jonathan Cobb, the government would have you believe,  
 11 is going to setup a drug transaction with Joseph Ward.  
 12 Well, what did Jonathan Cobb and David Cobb say? Or  
 13 I'm sorry, Jonathan Cobb says to David Cobb, "I got  
 14 Sporty with me. I got to drop him off." He's going to  
 15 make a drug deal, but he's not going to take his  
 16 right-hand man with him?

17           All this evidence, ladies and gentlemen, is  
 18 indicative of Darren Macklin having nothing to do with  
 19 this alleged drug conspiracy. He's no partner in  
 20 crime. He's no right-hand man.

21           October 20th. There's two calls, if I'm not  
 22 mistaken, where Darren Macklin is intercepted on  
 23 Jonathan Cobb's phone. And there's lots of  
 24 conversation, and I think the government mentioned this  
 25 in their closing, between Jonathan Cobb and the North

## Defendant D. Macklin's Closing Argument

30

1 Philadelphia supplier setting up the deal, setting up  
2 the terms of the deal, setting up the location,  
3 confirming it, reconfirming it. None of those calls  
4 are with the point person, Darren Macklin. None. No  
5 evidence that he even heard any of those calls.  
6 Nothing.

7 What does Darren Macklin do on October 20th?  
8 He answers the phone of Jonathan Cobb and David Cobb is  
9 calling and he says, "We're at the Mrs.' crib." And he  
10 calls back again and he says, "We're still at the Mrs.'  
11 crib."

12 David says something about his cell phone is  
13 running out of battery so I got to get there soon so he  
14 just tells him yeah, we're here. That's it. And then  
15 what does he do? Well, we know what he -- we did based  
16 upon a surveillance.

17 All we know that he did on October 20th is  
18 answer the phone, say hey, "We're at the Mrs.' crib."  
19 We know that he drives up, he's seen by Sergeant  
20 Boudwin driving in the passenger's seat, seated in the  
21 passenger seat of the Explorer that Jonathan Cobb was  
22 driving. That's what we know.

23 We know later that Detective Newell sees him  
24 getting into the passenger's side of the Impala with  
25 David Cobb. That's what we know. That's what they

## Defendant D. Macklin's Closing Argument

31

1 want you to believe is evidence to show that he had  
2 possession with intent to distribute a kilogram of  
3 cocaine on October 20th. That's what we have.

4 What else do we know about the 20th? Well,  
5 we know that the kilogram that they supposedly were  
6 ordering which was supposed to be broken down, we know  
7 that wasn't broken down, and that's been gone over. We  
8 know that the kilo is found in the Kia that's being  
9 driven by David Cobb. We know that Darren Macklin has  
10 never set foot in that Kia.

11 (Pause in proceedings.)

12 MS. GRASSO: And we know that the last time  
13 the police saw Jonathan Cobb was he was in the Kia all  
14 by himself. And we know that there's a call where  
15 Jonathan Cobb, who I don't know, maybe he was in the  
16 Kia alone, maybe he wasn't in the Kia alone anymore,  
17 but the last time they saw him he was in the Kia -- Kia  
18 alone. Jonathan Cobb is saying to the alleged North  
19 Philadelphia supplier, "We're here. We're back to  
20 back."

21 What do we know about the time table? Well,  
22 we know from Detective Boudwin that the last call  
23 regarding back to back with the North Philadelphia  
24 supplier between Jonathan Cobb and the North  
25 Philadelphia supplier occurs at 7:36.

## Defendant D. Macklin's Closing Argument

32

1           We know that the take down of the two  
2 vehicles doesn't happen until 8:45. We have no idea,  
3 based upon the evidence, of what happened in between.  
4 We know that Darren Macklin is still in the same car he  
5 was in when the police last saw him, which is the Chevy  
6 Impala in which there is no drugs. We don't know where  
7 they went, what they did, we don't know.

8           The government is speculating what they did,  
9 but I would suggest to you that the fact that  
10 everything is setup on these calls and they believe  
11 everything is going to happen exactly the way the calls  
12 say they're going to happen, but it doesn't because  
13 that broken down down kilo is a brick. So it didn't  
14 happen the way they suggested. We don't know how long  
15 that kilo was in that car based upon the evidence. We  
16 have no idea.

17          The government suggested in its closing that  
18 they switched cars because they're working together.  
19 Well, how does that make any sense? I mean every time  
20 we have evidence of them suppose -- of Jonathan Cobb  
21 supposedly going to the supplier in North Philadelphia  
22 or West Philadelphia or wherever, Darren Macklin is not  
23 with them.

24          They never go back to back. You don't hear  
25 any evidence about hey, well, the cops are out. We

## Defendant D. Macklin's Closing Argument

33

1 better go in two cars because, you know, it just makes  
2 more sense. We can switch it up. It doesn't make any  
3 sense. There's a million reasons they could be in two  
4 cars.

5 I'm sure you've gone out with friends where  
6 there's three of you and one person is driving alone  
7 and then they -- you decide to switch up cars just  
8 because hey, I'm going to drive with that person now.  
9 I mean there's one million explanations for it. One  
10 million. It doesn't show that they're working  
11 together. There's absolutely no evidence of that.

12 We have no evidence that these two cars  
13 pulled up back to back anywhere other than they want  
14 you to believe that because Jonathan Cobb says on the  
15 phone, "Hey, we're back to back."

16 Well, probably they were back to back  
17 somewhere. But we don't know who's in the car at that  
18 point. We have no evidence of that. We know who's in  
19 the car the last time they saw -- they see him and we  
20 know who's in the car when they stop them. And that's  
21 all we know based upon the evidence.

22 Does that give you pause? Does that make you  
23 think what could have happened? There's one million  
24 different things that could have happened here other  
25 than what the government suggests to you happened. I

## Defendant D. Macklin's Closing Argument

34

1 suggest to you yes, that's reasonable doubt, ladies and  
2 gentlemen.

3 The government said they're always together.  
4 Jonathan Cobb and Darren Macklin are always together.  
5 Detective Newell -- and this was on the government's  
6 redirect when after cross-examination he had been asked  
7 about whether or not they had seen Jonathan Cobb on  
8 their surveillance and Detective Newell was part of  
9 that surveillance team for that period in October  
10 leading up to the arrest date.

11 He told us that he saw Jonathan Cobb hundreds  
12 of times, or one hundred times, about one hundred  
13 times, whatever it was. He doesn't say he saw Darren  
14 Macklin, doesn't see the right-hand man. That's  
15 important.

16 Where do we have evidence that Darren Macklin  
17 is always with Jonathan Cobb? And if we have evidence  
18 that Darren Macklin is with Jonathan Cobb, where is the  
19 evidence that there's any illegal activity going on?  
20 There is none.

21 I just want to go through some of the  
22 civilian witnesses and what did they add to this case  
23 or not add to this case as the case may be. Donna  
24 Hill.

25 She testified that she is in a relationship

## Defendant D. Macklin's Closing Argument

35

1 with Jonathan Cobb. She known him for a year and a  
2 half. Of course she couldn't tell you who Darren  
3 Macklin was by name. She said she seen him on Jeffrey  
4 Street in a crowd of people.

5 She's been in a relationship with Jonathan  
6 Cobb for a year and a half, but she doesn't even know  
7 him by Sporty. She just doesn't even know his name.  
8 Does that suggest to you this is the right-hand man,  
9 the partner in crime? The woman that he's having a  
10 sexual relationship with a year and a half.

11 Angela Strand. What do we know about her.  
12 We know that she's been using cocaine from 2001, 2003,  
13 that's she's purchased drugs and sold those drugs. She  
14 didn't want to admit that she sold the drugs.

15 She wanted to just say well, I got gas money  
16 and all that stuff, but she sold drugs. We know she  
17 lied to the government when she was asked about her  
18 prior theft conviction.

19 And not only did she lie, as Mr. Cannon  
20 pointed out, she lied and she made up a pretty detailed  
21 story about what happened. But she is getting a pass  
22 entirely in terms of prosecution if she testifies in  
23 this case. She told you that.

24 And she says well, she knew that Jonathan  
25 Cobb would be fixing up houses. That she knew. And

## Defendant D. Macklin's Closing Argument

36

1 she knew that she's seen Darren Macklin around him on  
2 Jeffrey Street when the houses were being fixed up.  
3 What did she tell us? Nothing. Nothing about Darren  
4 Macklin being involved in criminal activity.

5 She wants you to think that by saying oh,  
6 well, there was a couple drug deals where he was there.  
7 But what does she tell us? She tells us she's never  
8 gotten drugs from Darren Macklin, she's never given  
9 money to Darren Macklin, she's never seen Darren  
10 Macklin go to a stash location, she's never seen him on  
11 Norris Street at 336 Norris Street, she's never seen  
12 him in her house on Tilghman Street when she would  
13 purchase drugs from Jonathan Cobb.

14 The only number she ever called to get drugs  
15 was not Darren Macklin's number. She didn't even know  
16 who Darren Macklin was until the government told her  
17 when she met them at Dick's the first time that they  
18 informed her that she was a target of their  
19 investigation.

20 Dawn Germany. She's got three prior drug  
21 convictions, she's a fugitive, a fugitive collecting  
22 unemployment, she's got a parole violation, she's been  
23 in federal custody, she sold drugs, she's purchased  
24 drugs.

25 She's going to be charged with twenty-eight

## Defendant D. Macklin's Closing Argument

37

1 grams. She's signed a plea agreement regarding only  
2 twenty-eight grams of drugs, and she believes that  
3 she's going to get eighteen months, no more than  
4 eighteen months. What does she tell us?

5 She tells us that she knows Jonathan Cobb is  
6 working on houses, that she's bought drugs from  
7 Jonathan Cobb. She can't tell us any of the dates that  
8 she said she's seen Darren Macklin on. She just  
9 testifies, you know, oh, I've seen him with Jonathan.  
10 But she can't tell us dates.

11 She doesn't give us any specifics as to when  
12 she sees Darren Macklin with Jonathan Cobb, with the  
13 exception of that one time when she says they're in the  
14 black pickup truck and that she got drugs from Jonathan  
15 Cobb on that day when they were in the black pickup  
16 truck together.

17 What she tells us about that day is she rolls  
18 up, or the car comes up and Jonathan is driving and  
19 Darren is I think in the passenger's seat. There's a  
20 conversation. The car leaves, the car comes back, and  
21 she's supplied with drugs, not from Darren Macklin.

22 She didn't have a drug-related conversation  
23 with Darren Macklin on that day. She didn't give money  
24 to Darren Macklin. She didn't get drugs from Darren  
25 Macklin. The government wants you to believe that

## Defendant D. Macklin's Closing Argument

38

1 because he's hanging around he must be involved.

2 He was arrested. He's in one of those cars  
3 on October 20th. He must know what's going on.

4 There's no evidence that he has any knowledge of that.  
5 There's absolutely no evidence of that in this case.

6 I asked her about the specific dates and how  
7 many times she told the government in her proffer about  
8 seeing Darren Macklin because I can't remember how many  
9 times she said she saw him in court. I think it was  
10 two or three times.

11 But I asked her did she ever tell the  
12 government before, and I think she said something like  
13 well, if I did, I don't remember. If they didn't write  
14 it down, then I don't know. Did you hear any rebuttal  
15 testimony from an agent to say yeah, she told me that  
16 before or yeah, it's in this report or it's not in my  
17 report, but she did tell me that? There's no evidence  
18 of that. I would suggest to you then you can't believe  
19 the testimony that she gave regarding that because it  
20 didn't happen.

21 Anthony Minor, Dink, Authentic, whatever you  
22 want to call him. He's got nicknames too. Everybody's  
23 got nicknames. He goes through October 16th, which is  
24 the transcripts that you heard regarding collecting the  
25 money.

## Defendant D. Macklin's Closing Argument

39

1           I asked him "He took the money from you,  
2 Darren Macklin took the money from you," and there was  
3 absolutely no conversation whatsoever, and he agreed  
4 they didn't speak. He didn't say this is what this is  
5 for. None of that. There's no evidence of that.

6           He tells you, Anthony Minor tells you that  
7 fifteen to twenty times he's made transactions where  
8 Darren Macklin is present. Again, he's not saying that  
9 I got drugs from Darren Macklin, Darren Macklin took  
10 money for drugs from me, none of that. He's just  
11 saying at fifteen -- all of a sudden fifteen, twenty  
12 times he's been around Jonathan Cobb when he's gotten  
13 drugs and Darren Macklin's been there.

14           Where's the evidence to back that up?  
15 Anything to corroborate that? Nothing. And I would  
16 suggest to you in order to believe Anthony Minor you  
17 have to have some sort of corroboration of that.

18           Again, there's no report by the agent who  
19 says when we interviewed him he told me that and I  
20 wrote it down, or there's no re -- testimony by the  
21 agent after Anthony Minor got on the stand and said  
22 yeah, he told me that. He told me that he saw him  
23 fifteen to twenty times, because it didn't happen,  
24 ladies and gentlemen.

25           Anthony Minor, I think you can evaluate him

## Defendant D. Macklin's Closing Argument

40

1 pretty clearly. He wouldn't even agree with me that he  
2 hoped to get a lighter sentence for his testimony. I  
3 think that defies all credibility and I think that's  
4 all you need to know about him. I'm not suggesting  
5 that the government is telling him to lie. I'm not  
6 suggesting that.

7 He's saying what he thinks the government  
8 wants to hear because he's scared and he wants to get  
9 out of jail. He wouldn't even agree that he was scared  
10 when he was picked up in Ohio or wherever it was  
11 because he knows that the government knows that he's  
12 dealt lots of cocaine before, up to a kilo from what we  
13 can tell if we take that thirty to forty times times  
14 twenty-eight grams an ounce on each occasion.

15 He's told the government that he's dealt a  
16 kilo. And the government would say to you well,  
17 because of that proffer letter he's protected.  
18 Whatever he said can't be used against him.

19 That's true under normal circumstances. But  
20 he's a fugitive. He was supposed to cooperate with the  
21 government and do what the government asked him to do.  
22 He was supposed to show up for trial prep and he never  
23 did. He took off.

24 Anthony Minor, when he's sitting in jail in  
25 Ohio and gets transported back here he's thinking I'm

## Defendant D. Macklin's Closing Argument

41

1       in deep water. For him to come in here for the first  
2       time and say fifteen to twenty times he saw Darren  
3       Macklin, it defies credibility.

4           Again, even if you want to believe that he  
5       saw him fifteen to twenty times, Sporty didn't give him  
6       drugs. Sporty didn't take money from him except for on  
7       the 16th when there was no conversation and Jonathan  
8       Cobb wasn't present, and there was no exchange in drugs  
9       on that day. It's nothing. It's not evidence against  
10      him.

11           The government gets to speak last, as you  
12      know, and obviously myself and the other attorneys  
13      would ask you to say in your mind what would we have to  
14      say about what they just said, and we would invite you  
15      to do that.

16           But, again, I ask you to look at this case in  
17      the way that the surveillance and this investigation  
18      started. Why is Darren Macklin here? He's here  
19      because on October 20th he picks up a phone and says,  
20      "We're at the Mrs.' crib," twice. A couple times he  
21      says, "We're at the Mrs.' crib. We're waiting for  
22      you," or whatever the case may be.

23           I would remind you that on October 20th when  
24      Jonathan Cobb has a conversation with the alleged North  
25      Philadelphia supplier Jonathan Cobb says I'm waiting

## Defendant D. Macklin's Closing Argument

42

1 for my brother. He doesn't say we, he says I'm waiting  
 2 for my brother. He doesn't say me and my partner are  
 3 waiting for my brother, he says I'm waiting for my  
 4 brother. And when Jonathan Cobb says man, he keeps  
 5 bugging me or he keeps calling me, I forget what the  
 6 slang was that he used to say that, he's talking to  
 7 David. He's not talking to Darren.

8 Darren Macklin is here because he says,  
 9 "We're at the Mrs.' crib," and he gets into a car  
 10 that's behind a car that has -- that's later stopped  
 11 that has a kilo in it. That's why he's here. He's not  
 12 a partner in crime, he's not a point person. He's  
 13 Sporty, and I would ask you to find him not guilty.

14 THE COURT: Government's rebuttal now.

15 MR. LEVERETT: Thank you, Your Honor. Good  
 16 morning. Ms. Grasso was right about one thing. I did  
 17 make a mistake yesterday about that call that she  
 18 talked about concerning two. That's the only thing  
 19 that she was right about. It wasn't concerning two of  
 20 some quantity of drugs, it was concerning two minutes.  
 21 That was a mistake.

22 But there was no mistake about that second  
 23 call, that call that you heard for yourself, that call  
 24 where Jonathan Cobb told Darren Macklin that they're on  
 25 first shift, referring to narcotics units, and there is

## Government's Rebuttal Argument

43

1 no mistake about Darren Macklin's role in this  
2 conspiracy.

3 Ms. Grasso said that the government has given  
4 her client a lot of names. Could we play call 3350,  
5 please?

6 (Call 3350 is being played at this time.)

7 MR. LEVERETT: That's Darren Macklin, ladies  
8 and gentlemen, calling himself Jonathan Cobb's partner.  
9 I didn't give him that name. He did.

10 There's no mistake about the nature of the  
11 relationship between Darren Macklin and Jonathan Cobb,  
12 and what Ms. Grasso wants to do is segregate, isolate,  
13 every single piece of their interaction.

14 But as I think His Honor will instruct you  
15 and as defense counsel has already said, this case  
16 comes down to common sense, what you know in real life,  
17 what you know about relationships in real life. Real  
18 life interactions don't happen in isolation. They  
19 happen fluently and over time.

20 What you heard in these calls and what you  
21 heard in this courtroom think about in connection with  
22 what you know in real life. Darren Macklin was always  
23 around Jonathan Cobb. The reason he was always around  
24 was because they were working together.

25 Ms. Grasso said that, for example, on October

## Government's Rebuttal Argument

44

1       16th there was no conversation between Darren Macklin  
2       and Anthony Minor during that drug dispute. But she  
3       overlooked the aspect of the call before that when  
4       Jonathan Cobb said, "Hey, I'm going to send Dink around  
5       to drop off a little change."

6               Darren Macklin didn't say what are you  
7       talking about? He said, "Oh, okay," because he knew.  
8       Common sense, ladies and gentlemen. That's just the  
9       way things work.

10              Darren Macklin knew what Jonathan Cobb did  
11       because he was right there with him. One time is a  
12       coincidence. A few times, a pattern. The evidence in  
13       this case, ladies and gentlemen, shows that Darren  
14       Macklin was just always around, and he was around  
15       helping, he was around facilitating, and he was around  
16       Jonathan Cobb as his partners. His words, not mine.

17              Now, Ms. Grasso also said that she was going  
18       to go through each and every call and take things heads  
19       on -- take things head on as they came up. She talked  
20       about the quizzzy call.

21              But she overlooked Jonathan Cobb's response  
22       to Darren Macklin's use of the word "quizzzy." He said  
23       no, no, no, no, no because he doesn't want Darren  
24       Macklin talking loosely like that on the telephone. He  
25       doesn't want him using drug terms on the telephone

## Government's Rebuttal Argument

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1 because they don't know who's going to be listening.

2                 She says that the only reason that Darren  
3 Macklin is here is because he answered the phone on  
4 October 20th and he was in a car. That's just not  
5 true. Darren Macklin is here for all the reasons that  
6 you heard during this case, ladies and gentlemen. It's  
7 not just that call or those calls.

8                 David Cobb calls Jonathan Cobb's phone and  
9 who answers? Darren Macklin answers. He says I'm  
10 going to meet you guys on the highway. Darren Macklin  
11 doesn't say huh, what are you talking about, where are  
12 we going? He says oh, okay.

13                 She says that Donna Hill, Jonathan Cobb's  
14 girlfriend, for lack of a better word, doesn't know  
15 Darren Macklin. Why doesn't she knew Darren Macklin?  
16 Because he's never around Ms. Grasso would have you  
17 believe.

18                 Darren Macklin knows her. He says, "We're at  
19 the Mrs.' crib." David Cobb knew exactly what he was  
20 talking about. "Why don't you just come meet us at the  
21 Mrs.' crib?" Meet us why? Because he knows where  
22 they're going, because he knows what they're doing.

23                 Yesterday Mr. Cannon and Mr. Jarvis both  
24 extended you an invitation to not accept the wiretap  
25 evidence in this case. And I submit to you that you

## Government's Rebuttal Argument

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1 should reject that invitation and you should consider  
2 all of the evidence in this case.

3 They talked about a search warrant. You  
4 heard from the officers in this case, they didn't need  
5 a search warrant to seize that kilogram of cocaine.  
6 All defense counsel talked extensively about the  
7 witnesses in this case.

8 They talked about Anthony Minor, they talked  
9 about Dawn Germany, they talked about Angela Strand.  
10 The reason that Angela Strand, Anthony Minor, and Dawn  
11 Germany were here as witnesses, ladies and gentlemen,  
12 is because they were on the telephone ordering cocaine  
13 from Jonathan Cobb.

14 What they said to you in court is  
15 corroborated with what you heard on the conversations  
16 that they had with Jonathan Cobb while they were  
17 ordering cocaine, and they explained those calls to  
18 you, what was happening in real time in their own  
19 words.

20 Anthony Minor told you that several times,  
21 fifteen to twenty times when he bought cocaine from  
22 Jonathan Cobb, Darren Macklin was there. Angela Strand  
23 told you that on several occasions when Jonathan Cobb  
24 was not around she was referred to David Cobb. You  
25 heard those tapes. You heard them in real time. You

## Government's Rebuttal Argument

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1 know the nature of the relationships here, ladies and  
2 gentlemen.

3 I agree with defense counsel in this regard.  
4 Please use your common sense. Now, concerning common  
5 sense, there was a lot of talk yesterday from Mr.  
6 Cannon about the drugs in this case. Mr. Cannon said  
7 he's a Missourian and drug talk is cheap.

8 Ladies and gentlemen, this kilogram of  
9 cocaine can't talk, but it says an awful lot. Now,  
10 there was a discussion yesterday when defense counsel  
11 suggested that Jonathan Cobb wanted something broken  
12 down, but what we have here is a brick.

13 They suggested to you that you ask well,  
14 where did the cocaine that was in the car, where did  
15 that come from? I think Mr. Cannon referred to it as  
16 the mystery in this case. There is no mystery in this  
17 case, ladies and gentlemen. That cocaine came from the  
18 North Philadelphia supplier.

19 Now, how do we know that it came from the  
20 North Philadelphia supplier? Because you heard the  
21 calls. You heard the calls on October 16, 2009, the  
22 calls where he said the reason I haven't been coming up  
23 there is because the quality of your cocaine has been  
24 poor.

25 You heard the North Philadelphia supplier say

## Government's Rebuttal Argument

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1 that it would be better this time. You heard the calls  
2 on October 20th where Jonathan Cobb said okay, I'm  
3 coming back, I'm going to have to go back to where I  
4 was before, referring to October 16th.

5 You heard the calls between Darren Macklin  
6 and David Cobb coordinating the trip to North  
7 Philadelphia to buy that cocaine. And you see the  
8 cocaine there on the table.

9 Now, what the defendants would have you  
10 believe is that because that's not broken down and  
11 there was mention of the term "broken down" in the  
12 coordinating calls that that cocaine was somehow  
13 already in that car. They didn't know that that  
14 cocaine was there though. It doesn't make sense,  
15 ladies and gentlemen.

16 For example, if the defendants drove, as  
17 their lawyers conceded, from Chester to North  
18 Philadelphia to buy cocaine, didn't get it, and got  
19 caught on the way back coincidentally with a kilogram  
20 of cocaine in the car, where is the money?

21 Where is the money for that failed deal?  
22 Ladies and gentlemen, the money is in North  
23 Philadelphia because they rolled up to North  
24 Philadelphia and bought a kilogram of cocaine. They  
25 would have you believe that they didn't know a kilogram

## Government's Rebuttal Argument

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1 of cocaine was in the car.

2 Jonathan Cobb would have you believe that he  
3 didn't know a kilogram of cocaine was in the Kia.

4 Jonathan Cobb, who told the FBI shortly after he was  
5 arrested that he could order up five or six kilograms  
6 right then. Jonathan Cobb, who as you heard years ago  
7 was convicted after he threw cocaine out of a window.

8 David Cobb didn't know that cocaine was in  
9 the car. David Cobb, who has been arrested twice in  
10 the past for possessing or distributing cocaine. It  
11 doesn't make sense, ladies and gentlemen. There is no  
12 mystery in this case. You heard what happened.

13 THE COURT: Two minutes.

14 MR. LEVERETT: Thank you, Your Honor. You  
15 heard what happened on October 20, 2009. And you see  
16 the drugs there on the table. Like I said, that  
17 cocaine can't talk, but it says an awful lot.

18 Ladies and gentlemen, all of the evidence in  
19 this case establishes beyond a reasonable doubt that  
20 Jonathan Cobb, David Cobb, and Darren Macklin conspired  
21 together to distribute cocaine.

22 The evidence in this case is their own  
23 conversations. The evidence in this case is their own  
24 relationship. The evidence in this case are the drug  
25 customers from Chester, Pennsylvania who were caught on

Government's Rebuttal Argument

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1 tape who you heard from both live and recorded.

2                 The evidence in this case is that kilogram of  
3 cocaine that was seized on October 20, 2009 after  
4 Jonathan Cobb, David Cobb and Darren Macklin  
5 coordinated a trip to the North Philadelphia supplier  
6 to buy it.

7                 Based on this evidence, ladies and gentlemen,  
8 I ask that you return a verdict of guilty on both  
9 counts. Thank you.

10               THE COURT: Thank you, counsel for closing  
11 statements. We are going to proceed now to charge you  
12 on the law that you will apply in this case. It should  
13 take approximately forty minutes.

14               Members of the jury, I want to thank you for  
15 the very careful attention you obviously have given to  
16 these proceedings so far. The right to trial by jury  
17 is an essential element of our system of justice, and  
18 without your participation the system could not  
19 function.

20               We have now arrived at the point in the case  
21 where I charge you before you go out to deliberate.  
22 That is to say this is the point where I tell you what  
23 the law is, and, as I told you at the beginning of the  
24 case, you must apply the law to the facts that you find  
25 from the evidence before you.

1                   CHARGE OF THE COURT

2                   THE COURT: You are not to single out any one  
3 instruction of mine in stating the law. Rather, you  
4 should consider them all as a whole, all of the  
5 instructions that I give you.

6                   Now, as jurors you have two duties. Your  
7 first duty to decide the facts from the evidence that  
8 you have heard and seen in court during the trial.  
9 This is your job and your job alone. I play no part in  
10 finding the facts.

11                  You should not take anything that I may have  
12 said or done during the course of the trial or that I  
13 may say or do during the course of this instruction as  
14 indicating what I think the evidence is or what I think  
15 your verdict should be.

16                  Your second duty is to apply the law that I  
17 give you to the facts that you find in the case. My  
18 role is to explain to you the legal principles. I must  
19 guide your deliberations, and you must apply my  
20 instructions carefully.

21                  Each of the instructions is important and you  
22 must apply them all. You must not substitute or follow  
23 your own notion or opinion on what the law is or ought  
24 to be. You must apply the law that I give you whether  
25 you agree with the law or now.

## Charge of the Court

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1           Whatever your verdict it will have to be  
2 unanimous. All of you will have to agree on it or  
3 there will be no verdict. In the jury room you will  
4 discuss the case among yourselves, but ultimately, each  
5 of you will have to make up his or her own mind.

6           This is a responsibility each of you has and  
7 you cannot avoid it. Perform those duties fairly and  
8 impartially. Do not allow sympathy, prejudice, fear,  
9 or public opinion to influence you and, of course, you  
10 should not be influenced by any person's race, color,  
11 religion, national ancestry, or gender.

12          You must make your decision in the case based  
13 only on the evidence that you saw and heard in the  
14 courtroom. Do not let rumors, suspicions, anything  
15 else that you may have seen or heard outside the  
16 courtroom influence your decision in any way.

17          The evidence from which you will find the  
18 facts consists of the following: the testimony of  
19 witnesses, document and other things that are received  
20 into evidence, and any factor of testimony that was  
21 stipulated, that is formally agreed to by the parties.  
22 And there were, at least in my recollection, a couple  
23 of occasions where the parties stipulated as to a  
24 particular fact.

25          In the event that they stipulated as to a

## Charge of the Court

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1 particular fact, that's fact for you to consider, but  
2 ultimately, it is up to you to accept it, to turn it  
3 down, or to give it whatever weight you think those  
4 stipulations deserve.

5 The following, however, is not evidence in  
6 the case. The indictment is not evidence. Statements  
7 and arguments of the lawyers to you, that is not  
8 evidence in the case. Questions by the lawyers and  
9 questions that I may have asked during the trial, and  
10 objections by the lawyers, including objections in  
11 which the lawyers stated fact, that's not evidence.  
12 Any testimony that I struck or told you to disregard  
13 and anything that you may have seen or heard outside  
14 the courtroom is not evidence.

15 You should use your common sense in weighing  
16 the evidence. Consider in light of the your everyday  
17 experiences with people and events and give it whatever  
18 weight you believe it deserves.

19 If your experience and common sense tells you  
20 that certain evidence is reasonably leads to a  
21 conclusion, you may reach that conclusion. As I told  
22 you in my preliminary instructions, the rules of  
23 evidence control what can be received into evidence.

24 During the trial the lawyers objected when  
25 they thought the evidence was being offered that was

## Charge of the Court

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1 not permitted under the rules of evidence. These  
2 objections simply meant that the lawyers were asking me  
3 to decide whether the evidence should be allowed under  
4 the rules.

5 You should not be influenced by the fact that  
6 an objection was made. You should also not be  
7 influenced by my ruling on the objection or a sidebar  
8 conference you may have overheard.

9 When I overruled an objection the question  
10 was answered and the exhibit was received as evidence  
11 you should treat that testimony or exhibit like any  
12 other evidence.

13 When I allowed the evidence or the testimony  
14 or exhibits for limited purpose on, and you recall that  
15 I did that on at least two occasions, I instructed you  
16 to consider that evidence only for that limited  
17 purpose. You must do that.

18 When I sustain an objection the question was  
19 not answered, the exhibit was not received as evidence.  
20 You must disregard the question entirely and the  
21 exhibit completely.

22 Do not think about it or guess what the  
23 witness might have said in answer to the question. Do  
24 not think about or guess what the exhibit might have  
25 shown.

## Charge of the Court

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1                         Sometimes the witness may have already  
2 answered before a lawyer objected or before I rule on  
3 the objection. If that happened and I sustained the  
4 objection, you must disregard the answer that was given  
5 by the witness.

6                         Also, if I ordered some testimony or evidence  
7 be stricken from the record, you must disregard that  
8 evidence. When you are deciding the case you must not  
9 consider or be influenced in any way by the testimony  
10 or other evidence that I told you to disregard.

11                         Although the lawyers may have called to your  
12 attention certain facts or factual conclusions that  
13 they thought were important, what the lawyers said is  
14 not evidence and is not binding upon you. It is your  
15 own recollection and interpretation of the evidence  
16 that controls your decision in the case.

17                         Also, do not assume from anything that I may  
18 have done or said during the trial that I have any  
19 opinion or have any knowledge about the issues or the  
20 facts of this case or about what your verdict should  
21 be.

22                         I'm not going to review the evidence that you  
23 have heard during the trial. It's been a relatively  
24 short trial. I may refer to some of it in order to put  
25 the legal questions I'm going to talk to you about in

## Charge of the Court

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1 context.

2 I probably will not, but if I do refer to any  
3 evidence and your recollection of what the evidence was  
4 and what it showed differs from mine, then it is your  
5 recollection of the evidence that governs and not mine.

6 The same is true also what the lawyers said  
7 to you during the closing statements about what the  
8 evidence showed. If your recollection differs from  
9 theirs as to what the evidence show, it is your  
10 recollection that governs and not theirs.

11 Now, at the conclusion of these instructions  
12 I will talk to you about a verdict sheet. And that  
13 will be the sheet where you will record the verdict.  
14 And I will discuss it more fully with you at the  
15 conclusion of these instructions.

16 Now, there are two types of evidence that you  
17 may consider in the case. One is called direct  
18 evidence and the other one is called circumstantial  
19 evidence, and you may use both types of evidence in  
20 reaching your verdict.

21 Direct evidence is simply evidence which you  
22 believe directly proves a fact. An example of direct  
23 evidence, of course, when a witness testifies about  
24 something that the witness knows from his or her own  
25 senses, something the witness has seen, touched, heard,

## Charge of the Court

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1 or smelled.

2         Circumstantial evidence on the other hand you  
3 believe indirectly proves a point. It is evidence that  
4 proves one or more facts in which you could reasonably  
5 find or infer the existence of some other fact or  
6 facts.

7         A reasonable inference is simply a deduction  
8 or conclusion that reason and experience and common  
9 sense leads you to make from the evidence. A  
10 reasonable inference is not a suspicion or a guess. It  
11 is reason, logical decision to find that a disputed  
12 fact exists on the basis of another fact.

13         For example, if someone walked into the  
14 courtroom wearing a wet raincoat and carrying a wet  
15 umbrella, that would be circumstantial or indirect  
16 evidence in which you could reasonably find or conclude  
17 that it was raining. You would not have to find that  
18 it was raining, but you could.

19         Sometimes different inferences may be drawn  
20 from the same set of facts. The government may ask you  
21 to draw one inference, the defendant may ask you to  
22 draw another. You and you alone must decide what  
23 reasonable inference you will draw based on all the  
24 evidence and your reason, experience, and common sense.

25         You should consider all of the evidence that

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1 is presented in this trial, direct and circumstantial.  
2 The law makes no distinction between the weight that  
3 you should give to either direct or circumstantial  
4 evidence. It is up to you to decide how much weight to  
5 give to the evidence, whether direct or circumstantial.

6 In reaching your verdict you are expected to  
7 use again your good sense and consider the evidence in  
8 the case for the purpose for which it has been  
9 admitted.

10 Further, you are expected to give the evidence  
11 reasonable and fair construction in light of your  
12 common knowledge of the natural tendencies and  
13 inclinations of human beings.

14 In other words, you may make deductions and  
15 reach conclusions that reason and common sense leads  
16 you to draw from the facts which you conclude have been  
17 established by the evidence.

18 In your consideration of the evidence you are  
19 not limited to the statements of the witnesses. You  
20 are permitted to draw inferences, but only from facts  
21 which you have been proven from the evidence and only  
22 such an inference as seen justified in light of your  
23 experience.

24 The only inferences that you can draw,  
25 however, are inferences reasonably and fairly based

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1 upon the evidence and not inferences based on your  
2 guesses or conjecture.

3 Now, during the trial you heard testimony of  
4 witnesses and argument by counsel that the government  
5 did not use specific investigative techniques, such as  
6 drug-sniffing dogs or tracking devices.

7 You may consider these facts in deciding  
8 whether the government has met its burden of proof  
9 because, as I told you, you should look at all of the  
10 evidence or lack of evidence in deciding whether the  
11 defendant is guilty.

12                 However, there is no legal requirement that  
13 the government use any specific investigative  
14 techniques or all possible techniques to prove its  
15 case.

16               There is no requirement to use drug-sniffing  
17 dogs or tracking devices. Your concern, as I have  
18 said, is to determine whether or not the evidence  
19 admitted into trial proves each defendant's guilty  
20 beyond a reasonable doubt.

Now, in deciding what the facts are you must decide what testimony you believe and what testimony you do not believe. You are the sole judges of the credibility of witnesses.

25 Credibility refers to whether a witness is

## Charge of the Court

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1 worthy of belief. Was a witness truthful? Was a  
2 witness' testimony accurate? You may believe  
3 everything a witness has said or only part of it or  
4 none of it.

5 You may decide whether to believe a witness  
6 based on his or her behavior and manner of testifying,  
7 the explanation the witness gave, and all the other  
8 evidence in the case, just as you would in any  
9 important matter when you are trying to decide if a  
10 person is truthful, is straightforward, and (inaudible)  
11 his or her recollection.

12 In deciding the question of credibility  
13 remember to use your common sense, your good judgment  
14 and your experience. In deciding what to believe you  
15 may consider a number of these factors.

16 One, the opportunity and ability of the  
17 witness to see and hear and know the things about which  
18 the witness testified. Two, the quality of the  
19 witness' knowledge, understanding, and memory.

20 Three, the witness' appearance, behavior, and  
21 manner while testifying. Fourth, whether the witness  
22 has an interest in the outcome of the case or a motive,  
23 bias, or prejudice.

24 Five, any relation the witness may have to a  
25 party in the case and any effect that the verdict may

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1 have on the witness. Six, whether a witness said or  
2 wrote anything before trial that was different than  
3 what the witness testified here in court.

4         Seven, whether the witness' testimony was  
5 consistent or inconsistent with other evidence that you  
6 believe. And finally, any other factors that bear on  
7 whether the witness should be believed or not believed.

8         If a witness is shown to have testified  
9 falsely concerning any material matter, you have the  
10 right to distrust such a witness' testimony in other  
11 particulars and you may reject all the testimony of  
12 that witness or give it such a credibility as you think  
13 it deserves.

14         Inconsistencies or discrepancies in a  
15 witness' testimony or between the testimony of  
16 different witnesses may or may not cause you to  
17 disbelieve a witness' testimony.

18         Two or more persons, as you know, witnessing  
19 an event may simply see it or hear it differently.  
20 Mistaken recollection, like a failure to recall, is a  
21 common human experience.

22         So in weighing the effects of an  
23 inconsistency you should consider whether it was about  
24 a matter of importance or an insignificant detail. You  
25 should also consider whether the inconsistency was an

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1 innocent inconsistency or whether it was intentional.

2 Now, the weight of the evidence to prove the  
3 fact does not necessarily depend upon the number of  
4 witnesses who testified or the quantity of evidence  
5 that was presented. What is more important than number  
6 or quantity is how believable the witnesses were and  
7 how much weight do you think their testimony deserves.

8 Now, during the trial you heard testimony  
9 from witnesses who, because of their education,  
10 experience, are permitted to state opinions and their  
11 reasons for their opinions.

12 Opinion testimony should be judged like any  
13 other testimony. You may accept it, you may reject it,  
14 or give it such a weight as you think it deserves  
15 considering the witness' education and experiences and  
16 the reasons given for the opinion as well as all other  
17 evidence in the case.

18 Although the government is required to prove  
19 that the defendant is guilty beyond a reasonable doubt,  
20 the government is not required to present all possible  
21 evidence related to the case or to produce all possible  
22 witnesses that may have some knowledge about the facts  
23 of the case.

24 In addition, as I have told you, a defendant  
25 is not required to present any evidence or to produce

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1 any witnesses. You should always bear in mind that the  
2 law never imposes upon a defendant in a criminal case  
3 the burden or duty of calling any witnesses or  
4 producing any evidence, and no adverse inference may be  
5 drawn for any failure to do so.

6 Now, the defendants in this case, Jonathan  
7 Cobb, David Cobb, and Darren Macklin, pleaded not  
8 guilty to the offenses charged. Therefore, the  
9 defendants are presumed to be innocent. The defendants  
10 started the trial with a clean slate and no evidence  
11 against them.

12 The presumption of innocence stays with them  
13 unless and until the government has presented evidence  
14 and overcomes that presumption by convincing you that  
15 the defendants are guilty of the offenses charged  
16 beyond a reasonable doubt.

17 A presumption of innocence requires that you  
18 find the defendants not guilty unless you are satisfied  
19 that the government has proved guilt beyond a  
20 reasonable doubt.

21 The presumption of innocence means that the  
22 defendant has no burden or obligation to present any  
23 evidence at all or to prove that they are not guilty.  
24 The burden or obligation of proof is on the government  
25 to prove that the defendants are guilty and this burden

## Charge of the Court

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1 stay with the government throughout the trial.

2           In order for you to find the defendants  
3 guilty of the offenses charged the government must  
4 convince you that the defendants are guilty beyond a  
5 reasonable doubt.

6           That means that the government must prove  
7 each and every element of the offense charged, and I'll  
8 speak to you about the elements in a moment, beyond a  
9 reasonable doubt. A defendant may not be convicted on  
10 suspicion or conjecture, but only on evidence proving  
11 guilt beyond a reasonable doubt.

12          Now, what is a reasonable doubt? Proof  
13 beyond a reasonable doubt does not mean proof beyond  
14 all possible doubts or to a mathematical certainty.  
15 Possible doubts are doubts based on conjecture,  
16 speculation, or hunches are not reasonable doubt.

17          A reasonable doubt is a fair doubt based on  
18 reason, logic, common sense, or experience. It is a  
19 doubt that an ordinary, reasonable person has after  
20 carefully weigh all the evidence.

21          It's a doubt of the sort that would cause him  
22 or her to hesitate to act in matters important in his  
23 or her own life. It may arise from the evidence or  
24 from the lack of evidence or from the nature of the  
25 evidence.

## Charge of the Court

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1           If having now heard all of the evidence you  
2 are convinced that the government proved each and every  
3 element of the offense charged beyond a reasonable  
4 doubt, you should return a verdict of guilty for that  
5 offense.

6           However, if you have a reasonable doubt about  
7 one or more of the elements of any of the offenses  
8 charged, then you must return a verdict of not guilty  
9 to that offense.

10          Now, the defendants have no duty to testify  
11 or to put on any evidence. And in this case the  
12 defendants elected not to testify. There is no  
13 requirement that they testify in the trial. In fact,  
14 they have an absolute constitutional right not to do  
15 so.

16          The fact that the defendants have not  
17 testified must not enter into your deliberations  
18 concerning guilty or innocence and must not enter into  
19 your deliberations at all.

20          Now, you have heard the testimony of law  
21 enforcement officers in this case. The fact that a  
22 witness is employed as a law enforcement officer does  
23 not mean that his testimony necessarily deserves more  
24 or less consideration or greater or lesser weight than  
25 that of any other witness.

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1           You must decide after reviewing all of the  
2 evidence whether you believe the testimony of each of  
3 the law enforcement witnesses and how much weight, if  
4 any, the testimony of each witness deserves.

5           Now, during the trial you heard recordings of  
6 conversations with the defendants which were made  
7 without the knowledge of the parties in the  
8 conversation, but with the consent and authorization of  
9 the court.

10          These recordings, sometimes referred to as  
11 wiretaps, were lawfully obtained. They use this  
12 procedure to gather evidence, if lawful, and the  
13 recording may be used by either party during the course  
14 of the trial.

15          You also heard audio recordings that were  
16 received into evidence and you were given written  
17 transcripts of the recordings. Actually, you saw the  
18 transcripts of the recordings on the screen that have  
19 been prepared by the government.

20          Keep in mind that the transcripts themselves  
21 are not evidence in the case. They were given to you  
22 as a guide to help you follow what was being said. The  
23 recordings themselves are the evidence.

24          So if you notice any difference between what  
25 you heard in the recordings and what you red in the

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1 transcript, you rely on what you heard, not what you  
2 read. And if you could not hear or understand certain  
3 parts of the recording, you must ignore the transcript  
4 as far as those parts are concerned.

5 You have heard that one of the witnesses,  
6 Angela Strand-Mattis has an arrangement with the  
7 government under which she has received a promise from  
8 the government that her testimony will not be used  
9 against her in a criminal trial for providing  
10 information to the government.

11 Angela Mattis' testimony was received into  
12 evidence and may be considered by you. The government  
13 is permitted to present the testimony of someone who  
14 received a promise from the government that her  
15 testimony will not be used against her in criminal case  
16 for providing information to the government.

17 But you should consider the testimony of  
18 Angela Mattis with great care and caution. In  
19 evaluating Angela Mattis' testimony you should consider  
20 this factor along with the other factors I have called  
21 to your attention.

22 You may give the testimony such a weight as  
23 you think it deserves. It is entirely up to you to  
24 determine whether or not Angela Mattis' information or  
25 testimony may have been influenced by her arrangement

## Charge of the Court

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1 with the government.

2           You also heard evidence that Anthony Miner  
3 and Dawn Germany have made a plea agreement with the  
4 government. Their testimony was received into evidence  
5 and may be considered by you.

6           The government is permitted to present the  
7 testimony of someone who has reached a plea bargain  
8 with the government in exchange for his or her  
9 testimony.

10          Well, you should consider the testimony of  
11 Anthony Miner and Dawn Germany with great care and  
12 caution. In evaluating Anthony Miner and Dawn Germany's  
13 testimony you should consider this factor, along with  
14 others, that I have called to your attention.

15          Whether or not their testimony may have been  
16 influenced by a plea agreement is for you to determine.  
17 You may give their testimony such a weight as you think  
18 it deserves.

19          Now, evidence was also introduced during the  
20 trial that Angela Mattis, Anthony Miner, and Dawn  
21 Germany were using drugs when these events took place.  
22 There is nothing improper about calling such a witness  
23 to testify about events within his or her personal  
24 knowledge.

25          On the other hand, their testimony must be

## Charge of the Court

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1 considered with care and caution. The testimony of a  
2 witness who used drugs when the events took place may  
3 be less believable because of the effects that drugs  
4 may have on his or her ability to perceive, remember or  
5 relay events in question. After considering their  
6 testimony in light of all of the evidence in the case  
7 you may give it such a weight as you think it deserves,  
8 if any.

9 You have heard testimony that in 2005  
10 defendant Jonathan Cobb was arrested after he threw a  
11 large plastic bag out of the window of a car while he  
12 was being followed by a police officer.

13 The plastic bag was determined to contain  
14 cocaine and he was later convicted of a felony  
15 possession in 2006. You also heard testimony that in  
16 2003 defendant David Cobb's home and vehicle were  
17 searched and a number of items were seized including  
18 bulk cocaine, a scale, and drug packaging material.  
19 David Cobb was subsequently convicted of possession  
20 with the intent to deliver cocaine in 2004.

21 This evidence of other acts was admitted only  
22 for a limited purpose. You may consider the events only  
23 for the purpose of deciding whether these two  
24 defendants has the requisite knowledge or intent  
25 necessary to commit the crime charged in the indictment

## Charge of the Court

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1 or did not commit the acts for which the defendants are  
2 on trial by accident or mistake.

3 You may consider this evidence to help you  
4 decide if the two defendants, that Jonathan Cobb and  
5 David Cobb knowingly and intentionally possessed a  
6 controlled substance on October 20th, 2009 with the  
7 intent to distribute.

8 Do not consider this evidence for any other  
9 purpose. Of course it is up to you to determine whether  
10 you believe this evidence and if you do believe it,  
11 whether you accept it for the purpose of. You may give  
12 such a weight as you feel it deserves but only for the  
13 limited purpose that I have described for you.

14 The defendants are not on trial for  
15 committing these other acts and you may not consider  
16 the evidence of these other acts as a substitute for  
17 proof that the defendants committed the crimes charged  
18 in this case.

19 You may not consider the evidence as proof  
20 that the defendants have a bad character or any  
21 propensity to commit crimes. Specifically, you may not  
22 use this evidence to conclude that because a defendant  
23 may have committed the other acts, they must also have  
24 committed the acts charged in the superceding  
25 indictment.

## Charge of the Court

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1                   Remember that the defendants are on trial  
2 here only for the conspiracy to distribute a controlled  
3 substance and possession of a controlled substance with  
4 the intent to deliver, not for these other acts. So do  
5 not return a guilty verdict unless the government  
6 proves the crimes charged in the superceding indictment  
7 in this case beyond a reasonable doubt.

8                   As I have said, the law presumes the  
9 defendants are innocent and never imposes a defendant  
10 in a criminal case a burden or duty of calling any  
11 witnesses or calling any evidence, or producing any  
12 evidence in the case.

13                  No presumption of guilt may be raised and no  
14 inference of any kind may be drawn from the failure of  
15 the defendant to call witnesses or to produce evidence.  
16 So, you must bear in mind always that the government  
17 has the burden of establishing all of the essential  
18 elements of the offense as defined in these  
19 instructions and that the government's burden is proved  
20 beyond a reasonable doubt.

21                  Now, the conduct which with the defendants  
22 have been charged is set in the superceding indictment,  
23 which I remind you again is only an accusation, it is  
24 not evidence, it is not proof of anything.

25                  The issue for you to decide is whether or not

## Charge of the Court

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1 the defendants have violated the law. You are to  
2 determine the defendants' guilt or innocence solely on  
3 the basis of the evidence and the law as I charge you.  
4 This is the oath that you took as jurors and the oath  
5 that you are expected to follow.

6 The punishment or penalty provided by law for  
7 the offenses charged in the superceding indictment is a  
8 matter exclusively within the province of the Court,  
9 should there be a verdict of guilty on any count.

10 Therefore, punishment should never be  
11 considered by you, the jury in anyway during your  
12 deliberation regarding the guilt or innocence of the  
13 defendants.

14 Before the defendants may be found guilty of  
15 any of the crimes charged in the superceding  
16 indictment, the government must establish beyond a  
17 reasonable doubt that the defendant acted in a manner  
18 forbidden by law as charged in the superceding  
19 indictment and that they acted with a requisite state  
20 of mind when they committed those acts.

21 Now, you will note that the superceding  
22 indictment charges that the offense was committed on or  
23 about a certain date. The government does not have to  
24 prove with certainty the exact date of the alleged  
25 offense.

## Charge of the Court

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1           It is sufficient if the government proves  
2 beyond a reasonable doubt that the offense was  
3 committed on a day reasonably near the date alleged.  
4 Now, the transcript named the speakers, but remember  
5 you must decide who you actually heard speaking on the  
6 recording, the names on the transcripts were used  
7 simply for your convenience.

8           I'm now going to explain to you the offenses  
9 for which the defendants are charged and the law that  
10 you must apply in this case. You are to determine the  
11 guilt or innocence of the defendants only as to the  
12 specific charge brought against them by the government.

13           Such charges are the only charges before your  
14 considerations and the defendants are not on trial for  
15 any conduct not charged as a crime in the superceding  
16 indictment.

17           The superceding indictment in the case  
18 alleges that defendant Jonathan Cobb, David Cobb, and  
19 Darren Macklin have been charged in two counts of the  
20 superceding indictment. Count 1, charges each defendant  
21 with conspiracy to possess with the intent to  
22 distribute more than five hundred grams of cocaine.  
23 Count 2 charges each defendant with possession with the  
24 intent to distribute cocaine and aiding and abetting  
25 the possession with the intent to distribute cocaine.

## Charge of the Court

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1           I will send you a copy of the superceding  
2 indictment to the juryroom to aid in your deliberation.  
3 Keep in mind again, that the indictment represents a  
4 formal method of charging someone with a commission of  
5 a crime, as such you may not consider as evidence of  
6 the defendants' guilt or draw any inference of guilt  
7 from them.

8           So, let's talk about Count 1, Count 1 is the  
9 superceding indictment charges that from beginning in  
10 or about August of 2009 through on or about October  
11 20th, 2009 in Chester in the Eastern District of  
12 Pennsylvania and elsewhere defendants Jonathan Cobb,  
13 David Cobb, and Darren Macklin conspired and agreed  
14 with others known and unknown to the grand jury to  
15 knowing and intentionally distribute five hundred grams  
16 or more of a mixture and substance containing a  
17 detectable amount of cocaine, a Schedule II controlled  
18 substance in violation of Title 21 United States Code  
19 Section 841(a)1.

20           It is a federal crime for two or more persons  
21 to agree or conspire to commit any offense against the  
22 United States even if they were never actually achieved  
23 their objective.

24           A conspiracy is a criminally kind of criminal  
25 partnership. In order for you to find the defendant

## Charge of the Court

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1 guilty of conspiracy to distribute a controlled  
2 substance you must find that the defendant (sic) proved  
3 beyond a reasonable doubt each of the following three  
4 elements.

5 First, two or more persons agreed to  
6 distribute the controlled substance. Two, Jonathan  
7 Cobb, David Cobb, and Darren Macklin were parties to or  
8 members of that agreement.

9 Three, Jonathan Cobb, David Cobb, and Darren  
10 Macklin joined the agreement or conspiracy knowing of  
11 its objective to distribute a controlled substance and  
12 intended to join together with at least one other  
13 alleged conspirator to achieve that objective.

14 That is, each defendant and at least one  
15 other alleged conspirator share a unity of purpose and  
16 the intent to achieve the objective. Let me explain  
17 those elements to you in more detail.

18 The first element of the crime of conspiracy  
19 is the existence of an agreement. The government must  
20 prove beyond a reasonable doubt that two or more  
21 persons knowingly and intentionally arrived at a mutual  
22 understanding or agreement either spoken or unspoken to  
23 work together to achieve the overall objective of the  
24 conspiracy to commit the offense of distributing a  
25 controlled substance.

## Charge of the Court

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1           The government does not have to prove the  
2 existence of a formal or a written agreement, or an  
3 expressed oral agreement spelling out the details of  
4 the understanding.

5           The government does not have to prove at all  
6 that all of the members of the conspiracy directly met  
7 or discussed between themselves their unlawful  
8 objectives or agreed to all the details or agreed to  
9 what the means were by which the objectives would be  
10 accomplished.

11          The government is only being required to  
12 prove that all the people named in the superceding  
13 indictment were in fact, parties to the agreement or  
14 that all members of the alleged conspiracy were named  
15 or that all members of the conspiracy are even known.

16          What the government must prove beyond a  
17 reasonable doubt is that two or more persons in some  
18 way or manner arrived at some type of agreement, mutual  
19 understanding or meeting of the minds to try to  
20 accomplish a common or unlawful objective.

21          You may consider both direct and  
22 circumstantial evidence in deciding whether the  
23 agreement has been proven beyond a reasonable doubt  
24 that an agreement or mutual understanding existed.

25          You may find the existence of a conspiracy

## Charge of the Court

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1 based on evidence of related facts or circumstances  
2 which prove that the activities of the participants in  
3 a criminal venture could not have been carried out  
4 except as a result of a preconceived agreement, scheme,  
5 or understanding.

6                 The charged conspiracy has as its subjects  
7 the offense of distributing controlled substance. The  
8 elements of the offense of distributing a controlled  
9 substance are, first, that the defendant distributed a  
10 mixture of substance containing a controlled substance.

11                 Two, that the defendant distributed the  
12 controlled substance knowingly or intentionally. Third,  
13 that the controlled substance was cocaine. Distribute  
14 means deliver or transfer possession or control of a  
15 controlled substance from one person to another.

16                 Distributing includes the sale of a  
17 controlled substance by one person to another, but does  
18 not require a sale. Distributing also includes the  
19 delivery or transfer without any financial  
20 compensation, such as a gift or trade.

21                 If you find that a criminal agreement or  
22 conspiracy existed, then in order to find Jonathan  
23 Cobb, David Cobb, and Darren Macklin guilty of  
24 conspiracy you must also find that the government  
25 proved beyond a reasonable doubt that the defendants

## Charge of the Court

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1 knowingly and intentionally joined that agreement or  
2 conspiracy during its existence.

3                 The government must prove that Jonathan Cobb,  
4 David Cobb, and Darren Macklin each knew the goal or  
5 objective of the agreement or conspiracy and  
6 voluntarily joined in it during its existence intending  
7 to achieve the common goal or objective and to work  
8 together with the other alleged conspirators towards  
9 that goal or objective.

10               The government needs not proof that the  
11 defendants knew everything about the conspiracy or that  
12 the defendants knew everyone involved in it or that  
13 each defendant was a member from the beginning.

14               The government also does not have to prove  
15 that each defendant played a major or substantial role  
16 in the conspiracy. You may consider both direct and  
17 circumstantial evidence in deciding whether Jonathan  
18 Cobb, David Cobb, and Darren Macklin joined the  
19 conspiracy, knew of the criminal objective, and  
20 intended to further the objective.

21               Evidence which shows that Jonathan Cobb,  
22 David Cobb, and Darren Macklin only knew about the  
23 conspiracy or only get bad company by associating with  
24 members of the conspiracy or were only present when it  
25 was discussed or when a crime was committed is not

## Charge of the Court

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1 sufficient to proof that he was a member of the  
2 conspiracy, even if he approved of what was happening  
3 or did not object to it.

4 Likewise, evidence showing that the defendant  
5 may have done something that happened to help the  
6 conspiracy does not necessarily prove that he joined  
7 the conspiracy.

8 You may, however, consider this evidence  
9 along with all the other evidence in deciding whether  
10 the government proved beyond a reasonable doubt that  
11 the defendant joined the conspiracy.

12 So, in order to find Jonathan Cobb, David  
13 Cobb, and Darren Macklin guilty of conspiracy, you must  
14 find that the defendant proved beyond a reasonable  
15 doubt that each defendant joined the conspiracy knowing  
16 of its objectives, and intending to help further or  
17 achieve that objective.

18 The government must prove that Jonathan Cobb,  
19 David Cobb, and Darren Macklin knew of the objective or  
20 goal of the conspiracy, that each defendant joined the  
21 conspiracy intending to help, further, or achieve that  
22 goal or objective and that each defendant and at least  
23 one other alleged conspirator would share unity or  
24 purpose towards that objective goal.

25 You may consider both direct and

## Charge of the Court

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1 circumstantial evidence including Jonathan Cobb, David  
2 Cobb, and Darren Macklin's word or conduct and other  
3 facts and circumstances in deciding whether they had  
4 the requisite knowledge and intent.

5 Now, with regard to the fourth element of the  
6 conspiracy, that is the overt acts, the government must  
7 prove beyond a reasonable doubt that during the  
8 existence of the conspiracy at least one member of the  
9 conspiracy performed at least one of the overt acts  
10 described in the superceding indictment for purposes of  
11 furthering or helping to achieve the object of the  
12 conspiracy.

13 The superceding indictment alleges certain  
14 overt acts, the government does not have to prove that  
15 all of these acts were committed or that any of these  
16 acts were themselves, illegal. Also, the government  
17 does not have to prove that Jonathan Cobb, David Cobb,  
18 and Darren Macklin personally committed any of the  
19 overt acts.

20 The government must prove beyond a reasonable  
21 doubt at least one member of the conspiracy committed  
22 at least one of the overt acts alleged in the  
23 superceding indictment and committed it during the time  
24 that the conspiracy existed for purposes of furthering  
25 or helping to achieve the objectives of the conspiracy.

## Charge of the Court

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1 You must unanimously agree on the overt act that was  
2 committed.

3 The government is not required to prove that  
4 any of the members of the conspiracy were successful in  
5 achieving any or all of the objectives of the  
6 conspiracy.

7 You may find Jonathan Cobb, David Cobb, and  
8 Darren Macklin guilty of conspiracy if you find that  
9 the government proved beyond a reasonable doubt the  
10 elements I have explained even if you find that the  
11 government did not prove that any of the conspiracy  
12 actually committed any other evidence against the  
13 United States.

14 Conspiracy is a criminal offense separate  
15 from the offense that was the objective of the  
16 conspiracy. A conspiracy is complete without the  
17 commission of the offense.

18 Now conspiracy ends when the objectives of  
19 the conspiracy have been achieved or when all the  
20 members of the conspiracy have withdrawn up front.  
21 However, a conspiracy maybe a continuing conspiracy and  
22 if it is, it lasts until at least there is some  
23 affirmative showing that it has ended or that all of  
24 these members have withdrawn.

25 A conspiracy may be a continuing one if the

## Charge of the Court

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1 agreement includes that understanding that a conspiracy  
2 will continue over time. Also, a conspiracy may have a  
3 continuing purpose or objective and therefore maybe a  
4 continuing conspiracy.

5 Evidence has been admitted in this case that  
6 certain persons were alleged to be co-conspirators of  
7 Jonathan Cobb, David Cobb, and Darren Macklin,  
8 (inaudible).

9 The acts or statements of any member of the  
10 conspiracy treated as the acts or statements of all  
11 members of the conspiracy. If these acts or statements  
12 were performed or spoken to during the existence of a  
13 conspiracy and to further the objectives of the  
14 conspiracy.

15 Therefore, you may consider as evidence  
16 against Jonathan Cobb, David Cobb, and Darren Macklin  
17 any acts done or statements made by any members of the  
18 conspiracy during the existence of and to further the  
19 objectives of the conspiracy.

20 You may consider these acts and statements  
21 even if they were done or made in the defendant's  
22 absence or without his knowledge. After all the  
23 evidence is presented in the case, it is up to you to  
24 decide whether you believe the evidence and how much  
25 weight to give to that evidence.

## Charge of the Court

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1                   So that is Count 1, now let me move on to  
2 Count 2. Count 2 charges that on or about October 20th,  
3 2009 in Chester in the Eastern District of Pennsylvania  
4 and elsewhere defendants Jonathan Cobb, David Cobb, and  
5 Darren Macklin and others known and unknown to the  
6 grand jury, knowing and intentionally possessed with  
7 the intent to distribute and aided and abetted the  
8 possession with the intent to distribute five hundred  
9 grams or more, that is approximately nine hundred and  
10 ninety-seven grams of a mixture and substance  
11 containing a detectable amount of cocaine, a Schedule  
12 II controlled substance.

13                  Section 841, Title 21 of the United States  
14 Code provides in part and I quote, "It shall be  
15 unlawful for any person knowing or intentionally to  
16 possess with the intent to distribute a controlled  
17 substance.

18                  "Count 2 of the superceding indictment  
19 charges the defendants with possessing five hundred  
20 grams or more of a mixture or substance containing a  
21 controlled substance, specifically cocaine with the  
22 intent to distribute the controlled substance which is  
23 a violation of the federal law.

24                  "In order to find Jonathan Cobb, David Cobb,  
25 and Darren Macklin guilty of the offenses charged in

## Charge of the Court

84

1 Count 2, you must find that the government proved each  
2 of the following five elements beyond a reasonable  
3 doubt.

4 "First, Jonathan Cobb, David Cobb, and Darren  
5 Macklin possessed a mixture or substance containing a  
6 detectable controlled substance. Number two, they  
7 possessed a controlled substance knowingly or  
8 intentionally.

9 "Three, they intended to distribute the  
10 controlled substance. Fourth, that the controlled  
11 substance was cocaine as charged in Count 2. Five,  
12 that the weight of the mixture of substance containing  
13 the controlled substance was approximately five hundred  
14 grams or more."

15 Let me talk to you about some of these terms,  
16 to possess a controlled substance means to have it  
17 within a person's control. The government does not  
18 have to prove that a defendant physically held the  
19 controlled substance, that is had actual possession.  
20 As long as a controlled substance was within the  
21 defendant's control, they possess it.

22 If you find that the defendants either had  
23 actual possession of the controlled substance or had  
24 the power and intention to exercise control over it,  
25 even though it was not in their physical possession,

## Charge of the Court

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1 that is that the defendants had the ability to take  
2 actual possession of the controlled substance when they  
3 wanted to do so, you may find that the government has  
4 proved possession.

5 Possession, while it may be momentary or  
6 fleeing proof of the ownership of the controlled  
7 substance is not required. The law also recognizes  
8 that possession may be sole or joint. If one person  
9 alone possesses a controlled substance, that is sole  
10 possession.

11 However, more than one person may have the  
12 power and intention to exercise control over a  
13 controlled substance. This is called joint possession.  
14 If you find that a defendant has such a power and  
15 intention, then he possessed a controlled substance  
16 even if he possessed it jointly with another.

17 Being in proximity to the controlled  
18 substance or mere presence on the property where it is  
19 located or mere association with the person who does  
20 control the controlled substance or the property is not  
21 enough to support a finding of possession.

22 Now, in order to find Jonathan Cobb, David  
23 Cobb, and Darren Macklin guilty of possession of a  
24 controlled substance with the intent to distribute as  
25 charged in Count 2 of the superceding indictment, you

## Charge of the Court

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1 must find that the government proved beyond a  
2 reasonable doubt that the defendants intended to  
3 distribute a mixture or substance containing a  
4 controlled substance.

5 To find the defendant had the intent, you  
6 must find that he had in mind or had planned in some  
7 way to deliver or transfer the possession or control of  
8 the controlled substance to someone else.

9 In determining whether a defendant had the  
10 intent to distribute, you may consider all the facts  
11 and circumstances shown by the evidence presented  
12 including his word and actions.

13 In determining a defendant's intent to  
14 distribute a controlled substance you may consider  
15 among others the quantity and purity of the controlled  
16 substance, the manner in which the controlled substance  
17 was packaged and the presence or absence of weapons,  
18 large amounts of cash, or equipment used in the  
19 processing or sale of the controlled substance.

20 You are instructed as a matter of law that  
21 cocaine is a controlled substance, that is some kind of  
22 prohibited drugs. It is solely up to you, however, to  
23 decide whether the government has proved beyond a  
24 reasonable doubt that Jonathan Cobb, David Cobb, and  
25 Darren Macklin possessed with the intent to distribute

## Charge of the Court

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1 a mixture or substance containing cocaine as charged in  
2 Count 2.

3 Now, let's talk about knowing and  
4 intentionally. To act knowingly as used in the offense  
5 charged means that Jonathan Cobb, David Cobb, and  
6 Darren Macklin were conscious and aware that they were  
7 engaged in the acts charged and knew of the surrounding  
8 facts and circumstances that make out the offense.

9 Knowingly does not require that they knew  
10 that the acts charged and surrounding facts actually  
11 amounted to a crime. To act intentionally as used in  
12 the offense charged means to act deliberately and not  
13 by accident.

14 Intentionally does not require that the  
15 defendant intended to violate the law. The phrase  
16 knowingly or intentionally as used in the offenses  
17 charged require that the government prove beyond a  
18 reasonable doubt that the defendants knew that they  
19 possessed with the intent to distribute, what they  
20 possessed with the intent to distribute was a  
21 controlled substance.

22 In addition, the government must also prove  
23 beyond a reasonable doubt that the controlled substance  
24 was, in fact, cocaine. However, as long as you find  
25 that the government proved beyond a reasonable doubt

## Charge of the Court

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1 that the defendants knew that what they possessed was a  
2 controlled substance, you need not find that they knew  
3 that the controlled substance was cocaine as charged in  
4 Count 2.

5 In deciding whether the defendants acted  
6 knowingly or intentionally, you may consider evidence  
7 about what they said, about what they did or failed to  
8 do, how they acted and all the facts and circumstances  
9 shown by the evidence that may prove what was in their  
10 minds at the time.

11 Now, on Count 2, a person may guilty of an  
12 offense because he personally committed the offense  
13 himself or because he aided and abetted another person  
14 in committing the offense.

15 A person who has aided and abetted another in  
16 committing the offense is often called an accomplice.  
17 The person whom the complice aids and abets is also  
18 known as the principal.

19 In this case the government alleges that  
20 Jonathan Cobb, David Cobb, and Darren Macklin aided and  
21 abetted the possession of a controlled substance with  
22 the intent to distribute as charged in Count 2.

23 In order to find each defendant guilty of  
24 these offenses because he or they aided or abetted in  
25 committing these offenses, you must find that the

## Charge of the Court

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1 government proved beyond a reasonable doubt each of the  
2 following four requirements.

3 First, that the principal committed the  
4 offense charged by committing each of the elements of  
5 the offenses charged as I have explained to you. Two  
6 of the defendants knew that the offense charged was  
7 going to be committed, that was being committed by the  
8 principal.

9 Third, that the defendants did some act for  
10 the purpose of aiding, assisting, soliciting,  
11 facilitating or encouraging the principal in committing  
12 the offense and with the intent that the principal  
13 commit the offense.

14 Fourth the defendants acted in some way, aid,  
15 assist, facilitate or encouraged the principal to  
16 commit the offense. The defendants act need not  
17 themselves be against the law. Evidence that a  
18 defendant was merely present during the commission of  
19 the offense is not enough for you to find him guilty as  
20 an aider and abetter.

21 In addition, if the offense show the  
22 defendant knew of the offense being committed or was  
23 about to be committed but does not also prove beyond a  
24 reasonable doubt that it was the defendants' intent and  
25 purpose to aid, assist, encourage or facilitate or

## Charge of the Court

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1 otherwise associate himself with the offense, you may  
2 not find that defendant guilty of the offense as an  
3 aider or abetter.

4 The government must prove beyond a reasonable  
5 doubt that the defendant in some way participated in  
6 the offense committed by the principal as something the  
7 defendant wished to bring about and to make it  
8 succeed.

9 If you find the defendant guilty of offenses  
10 charged in Counts 1 and 2 you must answer some  
11 questions called jury interrogatories to decide whether  
12 the offenses involved certain weights or quantities of  
13 controlled substance to decide, let me repeat that.

14 You must answer some questions called jury  
15 interrogatories to decide whether the offenses involved  
16 certain weights or quantities of controlled substances.

17 Do not answer these jury interrogatories  
18 until after you have reached your verdict as to each of  
19 the defendants. If you find that the government has no  
20 proof a defendant guilty of the offenses charged in  
21 Counts 1 and 2, then you do not need to answer the  
22 interrogatories.

23 If you find a defendant guilty then answering  
24 these interrogatories as in deciding your verdict, you  
25 must be unanimous, that is in order to find that the

## Charge of the Court

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1 offenses involved a certain weight or quantity of  
2 controlled substance you must all be satisfied that the  
3 government proved the weight or quantity beyond a  
4 reasonable doubt.

5 Weight or quantity means the total weight of  
6 any mixture or substance which contains a detectable  
7 amount of a controlled substance charged. Jury  
8 interrogatory number one relates to Count 1 and asks  
9 you to determine the weight of the cocaine involved in  
10 the conspiracy.

11 The first question is whether you unanimously  
12 find beyond a reasonable doubt that the weight or  
13 quantity of cocaine which was involved in a conspiracy  
14 was five hundred grams or more.

15 In making this decision you should consider  
16 all controlled substance that the members of the  
17 conspiracy actually distributed. If your answer to this  
18 question yes, that completes your determination of the  
19 amount of cocaine involved in the conspiracy. If your  
20 answer is no, that completes your determination of the  
21 amount of the cocaine involved in the conspiracy as  
22 well.

23 Jury interrogatory number two relates to  
24 Count 2 and asks you whether you unanimously find  
25 beyond a reasonable doubt that the weight or quantity

## Charge of the Court

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1 of cocaine which was possessed with the intent to  
2 distribute was five hundred grams or more.

3 If your answer to this question is yes, that  
4 completes jury interrogatory number two, if your answer  
5 is no, that completes jury interrogatory number two.

6 That concludes my instruction explaining the  
7 law regarding the testimony and other evidence and the  
8 offenses charged. Now, let's take a few moments to  
9 discuss your deliberations in the juryroom and your  
10 conduct during the course of your deliberation.

11 The first thing that you should do in the  
12 juryroom is choose someone in the jury to be your  
13 foreperson. This person will speak for you here in  
14 court.

15 He or she will preside over your  
16 deliberations, however the views and votes of the  
17 foreperson are entitled to no greater weight than those  
18 of any other jury.

19 Second, I want to remind you that your  
20 verdict whether it is guilty or not guilty must be  
21 unanimous to find Jonathan Cobb, David Cobb, and Darren  
22 Macklin guilty of an offense, everyone of you must  
23 agree that the government has overcome the presumption  
24 of innocence with evidence that prove each element of  
25 that offense beyond a reasonable doubt.

## Charge of the Court

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1           To find Jonathan Cobb, David Cobb, and Darren  
2 Macklin not guilty every one of you must agree that the  
3 government has failed to convince you beyond a  
4 reasonable doubt.

5           Third, if you decide that the government has  
6 proved Jonathan Cobb, David Cobb, and Darren Macklin  
7 guilty, then it will be my responsibility at the  
8 appropriate time to decide what the appropriate  
9 punishment should be, therefore, you should not  
10 consider the possible punishment in reaching your  
11 verdict.

12          Fourth, the defendants are all charged with  
13 two offenses, each offense is charged in a separate  
14 count on the superceding indictment. The number of  
15 offenses charged here is not evidence of guilt and  
16 should not influence your decision in any way.

17          Also in our system of justice guilt or  
18 innocence is personal and individual. You must  
19 separately consider the evidence against each defendant  
20 on each count and charge and you must return a separate  
21 verdict for each defendant on each offense.

22          For each offense you must decide whether the  
23 government has proven beyond a reasonable doubt that  
24 the particular defendant is guilty of the particular  
25 offense.

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1           Your decision as to any one defendant or any  
2 one offense whether guilty or not guilty should not  
3 influence your decision as to any other defendant or  
4 offenses. Each offense and each defendant should be  
5 considered separate.

6           Finally, as I have said before your verdict  
7 must be based only on the evidence received in the case  
8 and the law that I have given you. You should not take  
9 anything I may have said or done during the trial or  
10 anything that I have said or done during the course of  
11 this charge as any evidence of what I think your  
12 verdict should be. Your verdict is your exclusive  
13 responsibility in this case.

14          Now, that all of the evidence is in, the  
15 arguments are completed and once I have finished these  
16 instruction, you will return to the juryroom and  
17 commence your deliberation.

18          In fact, it is your duty to talk with each  
19 other about the evidence and to make every reason  
20 effort to reach a unanimous agreement. Talk with each  
21 other, listen carefully and respectfully to each  
22 other's views and keep an open mind as you listen to  
23 what your fellow jurors have to say.

24          Do not hesitate to change your mind, however,  
25 if you are convinced that other jurors are right and

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1 what your position was wrong. But do not ever change  
2 your mind just because other jurors see things  
3 differently or just to get the case over with. In the  
4 end, your vote must be exactly that, your own vote.

5 It is important for you to reach a unanimous  
6 agreement but only if you can do so honestly and in  
7 good conscious. Listen carefully to what other jurors  
8 have to say and then decide for yourself if the  
9 government has proved each of the defendants guilty  
10 beyond a reasonable doubt.

11 No one will be allowed to hear your  
12 discussions in the juryroom and no record will be made  
13 of what you have said. As I have indicated once the  
14 verdict is completed we will collect your notes and the  
15 notes will be destroyed, so there will be no written  
16 record of what was said or what you wrote down during  
17 the course of the trial. Therefore, you should all  
18 feel free to speak your mind.

19 Remember if you elected to take notes during  
20 the trial your notes should be only used as memory  
21 aids, you should not give your notes greater weight  
22 than your independent recollection.

23 You should rely on your own individual  
24 recollection of the evidence or lack of evidence and  
25 you should not undue the influence by the notes of any

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1 other juror. Notes are not entitled to any more weight  
2 than the memory and impression of each of the jurors.

3 Finally, once you start deliberating do not  
4 talk about the case to any court officials or to me or  
5 to anyone else except to each other. If you have any  
6 questions or messages your foreperson should write them  
7 down on a piece of paper, sign them and then give them  
8 to the court official who will be outside the jury room  
9 who will bring that note to me.

10 I will then talk to the lawyers about what  
11 you have asked and I will respond as soon as I can.  
12 This may take some time for me to talk to the  
13 lawyers, so in the mean time, if possible, continue  
14 with your deliberation on some other subject.

15 If you want to see any of the exhibits that  
16 were admitted into evidence, you may send me a message  
17 and if appropriate, I will send the exhibits back out  
18 with you.

19 One more thing about messages. Do not write  
20 down or tell anyone how you or anyone else have voted  
21 or how you stand on any one issue. That should stay a  
22 secret until you have finished your deliberations.

23 If you have occasion to communicate with the  
24 Court while you are deliberating, do not disclose the  
25 number of jurors that are voted to convict or to acquit

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1 on any one offense.

2 Now, we will have a verdict sheet prepared  
3 for each of the defendants and that verdict sheet, the  
4 verdict should be returned. Each of you will have a  
5 verdict sheet in the verdict room but when you have a  
6 reached a unanimous verdict the foreperson should write  
7 the verdict on the form, date and sign it and return to  
8 the courtroom and give that form to my deputy clerk who  
9 will then hand it up to me. So only one verdict form  
10 should be completed and dated and signed by the  
11 foreperson.

12 If you decide that the government has proved  
13 Jonathan Cobb, David Cobb, and Darren Macklin guilty of  
14 any or all of the offenses charged beyond a reasonable  
15 doubt, say so by having your foreperson mark the  
16 appropriate place on the form.

17 If you decide that the government has not  
18 proved Jonathan Cobb, David Cobb, and Darren Macklin  
19 guilty of some or all of the offenses charged beyond a  
20 reasonable doubt, say so by having your foreperson mark  
21 the appropriate place on the form.

22 Okay. So this completes my instruction and  
23 I'm going to now consult with the lawyers, if there is  
24 anything else before you go out to deliberate. May I  
25 see counsel at sidebar?

1 (Sidebar discussion begins.)

2 THE COURT: Any objections or exceptions to  
3 the charge?

4 MS. MARSTON: I have no objections. I did  
5 note that you only listed one of David Cobb's prior  
6 convictions and we actually --

7 THE COURT: What is that? I'm sorry?

8 MS. MARSTON: The instruction and I apologize  
9 I didn't catch it earlier, only listed one of the two  
10 prior convictions for David Cobb under 404(b), so I  
11 don't know whether you wanted to go back and mention  
12 the other one or if you are --

13 MR. JARVIS: There is no need to do that,  
14 Your Honor.

15 MS. MARSTON: That is fine, I'm fine. I just  
16 wanted to point that out.

17 THE COURT: Okay. No objections from the  
18 government.

19 MS. MARSTON: No.

20 THE COURT: For the defendant? Mr. Cannon?

21 MR. CANNON: No objection.

22 THE COURT: Mr. Jarvis?

23 MR. JARVIS: No objection, Your Honor.

24 THE COURT: Ms. Grasso?

25 MS. GRASSO: No, Your Honor.

1                   THE COURT: Okay. So the case is ready to  
2 proceed to deliberation.

3                   MR. CANNON: Yes.

4                   MR. JARVIS: My coffee stained verdict form.

5                   THE COURT: Okay.

6                   MR. JARVIS: The one this interrogatory reads  
7 in my mind is not really an interrogatory the way I  
8 would like to see it because the issue is a controlled  
9 substance, fine, but in what amounts, and they are not  
10 giving any options here.

11                  THE COURT: What?

12                  MR. JARVIS: Options, two terms of quantities  
13 of the cocaine. The only option is was it five hundred  
14 grams or more. I would like to see an interrogatory  
15 include less than five hundred grams or if there is  
16 more than five hundred grams, fine. Have you  
17 considered putting a cap --

18                  THE COURT: Well, if it is not more than five  
19 hundred, it is less than five hundred, isn't it?

20                  MS. MARSTON: Right.

21                  MR. JARVIS: That is correct. I understand  
22 that, but even after that it says five hundred grams,  
23 for sentencing purposes, you know, there is no cap on  
24 it.

25                  THE COURT: Well, you want the jury to

1 determine the actual amount?

2 MR. JARVIS: Well, it is an idea. I'm  
3 suggesting that we have no idea, lesser of an idea to  
4 an amount would be like this. Now, I see Ms. Marston --

5 THE COURT: Well, you have an idea that it is  
6 more than five hundred or less than five hundred, you  
7 don't know exactly how much more than five hundred it  
8 is.

9 MR. JARVIS: More than five hundred, that is  
10 really my concern.

11 THE COURT: Okay.

12 MS. MARSTON: Well, Your Honor, that it  
13 attracts the mandatory minimum language in the statute  
14 and that is the appropriate jury interrogatory. If  
15 they were to find him guilty of more than five hundred,  
16 we can put on at sentencing additional evidence for  
17 purposes of the sentencing guideline calculation, Your  
18 Honor, and that is not something this jury is to  
19 consider.

20 MR. JARVIS: Well, that is my point, if this  
21 jury makes a finding of an amount then whether it  
22 precludes the government or not the government might be  
23 satisfied with the amount that they have said. At  
24 sentencing they can just do whatever they want to do  
25 but at least it gets their finding of the quantity --

1                   THE COURT: Well, it seems to me that your  
2 argument will be or is that it is the role of the jury  
3 to determine the amount of cocaine that is involved in  
4 the conspiracy.

5                   Now, if you are correct in your position in  
6 the event that they are found guilty, the government  
7 will be stuck with five hundred grams. If you are  
8 incorrect they will then be able to put on the  
9 evidence.

10                  So, the question is whether under Booker and  
11 decisions that have come down since then, this is a  
12 proper determination by the Court or by the jury. I  
13 think it is, by accord, but in the event that you are  
14 correct, that will be the result. Is that right? Does  
15 everybody agree to that?

16                  MS. MARSTON: Correct, yes.

17                  THE COURT: So you will have in the event  
18 that there is a conviction, the opportunity to argue  
19 that you raised it at sidebar, the Court declined to do  
20 that and therefore that is the way it is.

21                  MR. JARVIS: Understood, Your Honor.

22                  THE COURT: Everybody joins in on that?

23                  MR. JARVIS: Yes, Your Honor.

24                  MS. MARSTON: Yes.

25                  THE COURT: Okay. Very well, so we can send

1 the case out now.

2 (Sidebar discussion concluded.)

3 THE COURT: Okay. May we have the security  
4 officer come forth and may the security officer be  
5 sworn.

6 (The court security officer was sworn at this  
7 time.)

8 THE COURT: At this time jurors one to  
9 twelve, please proceed to the juryroom, the two  
10 alternates please remain seated and you should take  
11 your notes with you and begin your deliberation and  
12 lunch should be served around 12:00? 12:15. Okay,  
13 please be proceed to the jury room.

14 (Jury out, 11:22 a.m.)

15 THE COURT: Okay, please be seated. The two  
16 alternates, let me just go over your role. As I  
17 indicated the role of the alternate is an important one  
18 because in the event that there is a need to substitute  
19 a juror we wouldn't have to start the trial over again  
20 so that you stand ready to fill in if that is the case.

21 So, the case is not yet ended, so what I'm  
22 going to ask you is to go with Mr. Vance, who is going  
23 to take you somewhere here in the courthouse and you  
24 will have lunch delivered to you and, you know, read a  
25 book or do whatever you can do to when the time that

1 they are deliberating in the event that there is a need  
2 to call upon your services.

3           It is, I understand somewhat frustrating to  
4 hear all of the evidence and then don't take part in  
5 the final deliberations. But we really appreciate it  
6 because it would be an enormous cost to the system if  
7 we did not have alternate jurors who are ready,  
8 willing, and able to fill in, in the event they were  
9 called.

10 So, remember that you are still jurors, so  
11 subject to the same instructions, do not discuss the  
12 case among yourselves or with anyone or read anything  
13 about it if there is anything to be read about it.  
14 That is you are still jurors and subject to the same  
15 instructions except that you are sort of on stand by  
16 for the time being.

17                   So, I'm going to ask Mr. Vance, please if you  
18 would take the jurors to a safe place here in the  
19 courthouse. So Mr. Matkowski, do you want to take the  
20 jurors back or Mr. Vance?

21 | (Pause in proceedings.)

22 THE COURT: Okay. Now, a couple things,  
23 please be seated. There are some final instructions  
24 here.

25 Number one, I like to have the exhibits

1 placed on the exhibit table and we will have a table  
2 here set up and each side will place exhibits there and  
3 each of you should be certain that each piece of paper  
4 or each piece of exhibit except for the drugs, that is  
5 on the exhibit table has been duly admitted.

6 So as a responsibility of counsel to ensure  
7 that exhibit has been duly admitted. In the event that  
8 there is a call for that exhibit we will rely upon  
9 counsel's verification of the exhibit was admitted.

10 Number two, we will at 12:15 then adjourn for  
11 lunch break so that you can leave the courtroom area,  
12 but you should return around 1:00 and also leave your  
13 cell numbers, et cetera in the event of some unforeseen  
14 need for your participation.

15 Number three, other than during lunch, please  
16 remain on the floor in contact with Mr. Makowski or Mr.  
17 Vance in the event that there is a need to respond to  
18 the jury or there is a verdict where they are able to  
19 find you promptly and will not delay the proceedings.

20 So, any questions, any comments, anything  
21 that we need to address before we adjourn? Yes, Ms.  
22 Grasso?

23 MS. GRASSO: Your Honor, I am not familiar  
24 with how the Court deals with the exhibits, are you  
25 stating that by agreeing that the exhibits that are on

1 the exhibit table that if the jury were to ask for them  
2 the Court would send them back no matter what?

3 THE COURT: Ordinarily I would do it unless  
4 there is an objection.

5 MS. GRASSO: Okay.

6 THE COURT: If there is an objection then we  
7 will hear the objection.

8 MS. GRASSO: So we would have an opportunity  
9 to be called in to say that, you know, the jurors asked  
10 to see exhibit --

11 THE COURT: Yes, of course.

12 MS. GRASSO: Okay. I wasn't sure, I thought  
13 it would be automatic without our knowledge, I wasn't  
14 sure.

15 THE COURT: All we want to be sure is that  
16 only evidence that has been admitted is on that table,  
17 but if they ask for Exhibit 1 and you say I have no  
18 objection, nobody has any objection, we will send  
19 Exhibit number 1.

20 MS. GRASSO: Understood.

21 THE COURT: We don't all have to congregate  
22 because Exhibit number 1 would already be on that  
23 table. Now, if you say I object to Exhibit number 1,  
24 then we congregate and decide whether or not to send it  
25 back.

1                   So it is a way of trying to facilitate the  
2 production of the exhibits with the exception of the  
3 drugs. I think every other exhibit can be placed. The  
4 drugs should remain in the custody of government  
5 counsel throughout the course of the proceedings.

6                   Okay. Very well, we will stand adjourned at  
7 this time.

8                   (Recess, 11:28 a.m. to 1:20 p.m.)

9                   THE COURT: Okay. Please be seated. We have  
10 a note from the jury. I have shared the note with  
11 counsel and it reads for "Count 2, is it aiding or  
12 abetting or possession, or is it aiding and abetting  
13 and possession, i.e. if someone possessed but did not  
14 aid and abet or vice versa? Do we need to consider  
15 both, i.e. if innocent of one, innocent of both, guilty  
16 of one, guilty of both." Signed foreman, 6-25-10.

17                  This note came in at about 12:20 and we are  
18 addressing it now at 1:20 due to a lunch recess. Okay.  
19 So, Ms. Marston, what is the answer to this question?

20                  MS. MARSTON: Well, Your Honor, I think what  
21 I would propose is that we reinstruct on Count 2. You  
22 know, obviously the indictment reads it is aiding and  
23 abetting the possession with the intent to distribute.

24                  If they found somebody, they don't have to  
25 aid and abet to possess with the intent to distribute

1       in order to be guilty of this count. I guess that is  
2       not clear to them, but I think probably the best way of  
3       going about this is reinstructing them on Count 2.

4             THE COURT: Mr. Cannon?

5             MR. CANNON: Well, just trying to interpret  
6       the note for the benefit of the Court, it seems to me  
7       that what the foreperson is asking is in order to find  
8       the defendants guilty of Count 2, do they have to find  
9       that not only did they possess but they also aided and  
10      abetted.

11            In other words, they want to know do they  
12       have to find both things in order to return a verdict  
13       of guilty and if only one of those two things has  
14       proven to them, that is that they either possessed or  
15       aided and abetted, then that could be a basis for  
16       acquittal according to the second part of their note.

17            THE COURT: Okay. So what would you like to  
18       do?

19            MR. CANNON: I agree that we should just  
20       reinstruct on Count 2.

21            THE COURT: Okay. Ms. Grasso?

22            MS. GRASSO: Your Honor, well I agree with  
23       Mr. Cannon's interpretation of what the question is  
24       trying to ask. I think Count 2 of the superceding  
25       indictment which clearly says, "possess with the intent

1 to distribute and aided and abetted the possession with  
2 intent to distribute" speaks for itself.

3 I would simply refer the jury at this time  
4 back to the clear language of Count 2 of the  
5 indictment. They have not asked for the charge at this  
6 point and I'm not sure without reviewing the specific  
7 charge that the Court would read.

8 I'm not sure that it is instructive on the  
9 question that they've asked. Because they may still  
10 very well have the same question and I think it is the  
11 language, it is that word, "and" after possessed with  
12 intent to distribute comma "and" aided and abetted  
13 which is the clear language of the indictment which  
14 clearly means that they have to find that the way it is  
15 charged, that they do have to find them guilty of both  
16 in order to be able to convict them on Count 2. It is  
17 the government's indictment.

18 MS. MARSTON: Your Honor, I agree it is the  
19 government's indictment, but however and I also agree  
20 we didn't instruct on the use of the conjunctive "and".

21 So, I don't think we can go back reinstruct  
22 them on that, but I would say that, you know, it is not  
23 required, just because the indictment reads "and" that  
24 does not mean they have to find aiding and abetting and  
25 possession with the intent to distribute. They can

1 find just possession with the intent to distribute  
2 without finding somebody aiding and abetting.

3 MS. GRASSO: I'm not sure why we have a  
4 charging document then, Your Honor.

5 THE COURT: Well, will recharging Count 2  
6 answer the question?

7 MS. MARSTON: I'm sorry?

8 THE COURT: Will recharging them on Count 2  
9 answer the question?

10 MS. MARSTON: To answer the question, yes, I  
11 agree.

12 THE COURT: It will answer the question  
13 according to you?

14 (Pause in proceedings.)

15 MS. MARSTON: Let me look a minute here, Your  
16 Honor. I mean I'm not sure if it is going to answer  
17 their complete question, but it is obviously the law as  
18 you have given it to them which is correct.

19 MS. GRASSO: Your Honor, I am not conceding  
20 that rereading the charge answers their question but if  
21 the Court is inclined to reread the charge on Count 2,  
22 I would first instruct the jury or I would ask that the  
23 Court would first instruct the jury that they should  
24 refer to the clear language of the indictment.

25 MS. MARSTON: Well, I --

1 MS. GRASSO: Or the plain language of the  
2 indictment, you don't have use the word clear, but to  
3 the language of the superceding indictment itself to  
4 look at that first.

5 MS. MARSTON: Well, I don't agree with that,  
6 I mean the indictment is not evidence and the  
7 indictment is not the law. They are supposed to follow  
8 the law in this case that Your Honor has given.

9 THE COURT: Okay.

10 MR. JARVIS: Your Honor, respectfully, I'm  
11 going back through your instructions now and I'm at  
12 page forty-two, I'm not really sure if we can be on the  
13 same page on this issue or not, but just looking back  
14 beginning at paragraph ninety-three, that is the  
15 section that begins with the possession with the intent  
16 to distribute, accomplish liability, aiding and  
17 abetting, is what they are actually asking about. I'm  
18 not sure --

19 THE COURT: Page forty-three?

20 MR. JARVIS: Starting at forty-two, Your  
21 Honor, I'm sorry I may have mispoke.

22 MS. MARSTON: Paragraph ninety-three.

23 MR. JARVIS: Paragraph ninety-three.

24 THE COURT: Yes?

25 MR. JARVIS: Ours is a draft.

1           THE COURT: Do we have different versions?

2           MS. MARSTON: Yes, it is this. You are right.

3           MR. JARVIS: You not got the revised.

4           THE COURT: I think we should all have the  
5 same version.

6           MS. MARSTON: It is the first paragraph under  
7 Count 2, possession of controlled substance, Your  
8 Honor.

9           THE COURT: Okay. Ninety-three, you are  
10 instructed that as a matter of law, is that what you  
11 are saying?

12          MS. MARSTON: No, a person may be guilty of  
13 an offense because he personally the committed the  
14 offense himself.

15          THE COURT: Well, what paragraph is it?

16          MS. MARSTON: It is our ninety-three, but you  
17 have a revised set of instructions.

18          MR. JARVIS: That we don't have a copy of,  
19 Your Honor, we have the draft.

20          MS. MARSTON: I can hand up if you want to  
21 see the revised set, Your Honor.

22          MS. GRASSO: Your Honor, if I may interject  
23 while the Court is looking at that. We have two  
24 subheadings that are, you know, headings that are  
25 underlined that say Count 2.

1           One says Count 2 possession of a controlled  
2 substance with intent to distribute and then the other  
3 one says Count 2, possession of a controlled substance  
4 aiding and abetting.

5           So, clearly the jury wants to know, they  
6 don't need those individual sections reread, they need  
7 to know whether or not the conjunction "and" or the  
8 conjunction "or" has to be placed between the two of  
9 those and the only instruction we have for that, Your  
10 Honor, is the superceding indictment.

11           MS. MARSTON: The superceding indictment is  
12 not an instruction, Your Honor. I mean, I am now  
13 looking at it and I do believe it is going to answer  
14 their question, Your Honor, because it does  
15 specifically say "or."

16           THE COURT: Where is that?

17           (Pause in proceedings.)

18           MS. MARSTON: It looks like it is page forty-  
19 three in the revised instructions, Your Honor. It looks  
20 like it is new paragraph ninety-seven.

21           MS. GRASSO: Can you read the first couple  
22 lines of it because our numbers are off.

23           MS. MARSTON: "The person may be guilty of  
24 the offense because he personally committed the offense  
25 himself or because he aided or abetted another person

1 in committing the offense.

2 "A person who has aided and abetted another  
3 person in committing an offense is often called an  
4 accomplice. A person whom an accomplice aids and abets  
5 is known as the principal."

6 MS. GRASSO: Right, but that is a subset of  
7 the -- Count 2 basically has two subsets which I think  
8 is what they are trying to figure out, whether or not  
9 "and" goes between them or "or", and what she just read  
10 is underneath one of the subsets of Count 2, so I'm not  
11 sure how that is instructed.

12 THE COURT: Okay. I think the instruction is  
13 correct, we will reread the entire instruction to them  
14 on Count 2. I think that answers the question and it  
15 will include both so-called "subsets". Okay, will you  
16 bring the jury in, please?

17 (Pause in proceedings.)

18 MS. GRASSO: Your Honor, could I just  
19 inquire, again, I don't have the revised set in front  
20 of me but I'm assuming --

21 THE COURT: Well, get the revised one because  
22 that is the one that we are talking about.

23 MS. GRASSO: I just wanted to be clear on the  
24 paragraphs where the Court is going to start and where  
25 the Court is going to end.

1 THE COURT: I'm going to start at eighty-  
2 eight.

3 MS. GRASSO: Eighty-eight? Count 2 starts at  
4 eighty-four.

5 THE COURT: Eight-four, we will start at --

6 MS. GRASSO: And would go all the way to  
7 paragraph, through and including paragraph ninety-nine?

8 THE COURT: Yes.

9 MS. GRASSO: Okay. Very well, Your Honor.

10 Now, we're on the same page. Thank you.

11 | THE COURT: Okay.

12 (Pause in proceedings.)

13 (Jury in, 1:32 p.m.)

14 THE COURT: Okay. Please be seated. Okay, we  
15 have your question and I will just repeat it to be sure  
16 that you remember it.

17                 "For Count 2, is it aiding and abetting or  
18 possession or is it aiding and abetting and possession,  
19 i.e. if someone possessed but did not aid and abet or  
20 vice versa, do we need to consider both, i.e. if  
21 innocent of one, innocent of both, guilty of one,  
22 guilty of both?" The best way to answer that question  
23 and to put it in context is to revisit my instructions  
24 to you on Count 2 which I'm going to do.

25 Count 2 charges that on or about October

1       20th, 2009 in Chester in the Eastern District of  
2 Pennsylvania and elsewhere defendants Jonathan Cobb,  
3 David Cobb, and Darren Macklin and others known and  
4 unknown to the grand jury, knowing and intentionally  
5 possessed with the intent to distribute and aided and  
6 abetted the possession with the intent to distribute  
7 five hundred grams or more, that is approximately nine  
8 hundred and ninety-seven grams of a mixture and  
9 substance containing a detectable amount of cocaine, a  
10 schedule two controlled substance.

11                 Section 841 Title 21 of the United States  
12 Code provides in part and I quote, "It shall be  
13 unlawful for any person knowing or intentionally to  
14 possess with the intent to distribute a controlled  
15 substance.

16                 "Count 2 of the superceding indictment  
17 charges the defendants with possessing five hundred  
18 grams or more of a mixture or substance containing a  
19 controlled substance, specifically cocaine with the  
20 intent to distribute the controlled substance which is  
21 a violation of the federal law.

22                 "In order to find Jonathan Cobb, David Cobb,  
23 and Darren Macklin guilty of the offenses charged in  
24 Count 2, you must find that the government proved each  
25 of the following five elements beyond a reasonable

1 doubt.

2           "First, Jonathan Cobb, David Cobb, and Darren  
3 Macklin possessed a mixture or substance containing a  
4 detectable controlled substance. Number two, they  
5 possessed a controlled substance knowingly or  
6 intentionally.

7           "Three, they intended to distribute the  
8 controlled substance. Fourth, that the controlled  
9 substance was cocaine as charged in Count 2. Five,  
10 that the weight of the mixture of substance containing  
11 the controlled substance was approximately five hundred  
12 grams or more.

13           "To possess a controlled substance means to  
14 have it within a person's control. The government does  
15 not have to prove that a defendant physically held the  
16 controlled substance, that is had actual possession. As  
17 long as a controlled substance within the defendant's  
18 control, they possess it.

19           "If you find that the defendants either had  
20 actual possession of the controlled substance or had  
21 the power and intention to exercise control over it,  
22 even though it was not in their physical possession,  
23 that is that the defendants had the ability to take  
24 actual possession of the controlled substance when they  
25 wanted to do so, you may find that the government has

1 proved possession. Possession, while it may be  
2 momentary or fleeting proof of the ownership of the  
3 controlled substance is not required.

4           "The law also recognizes that possession may  
5 be sole or joint. If one person alone possesses a  
6 controlled substance, that is sole possession. However,  
7 more than one person may have the power and intention  
8 to exercise control over a controlled substance. This  
9 is called joint possession.

10           "If you find that a defendant has such a  
11 power and intention, then he possessed a controlled  
12 substance even if he possessed it jointly with another.  
13 Being in proximity to the controlled substance or mere  
14 presence on the property where it is located or mere  
15 association with the person who does control the  
16 controlled substance or the property is not enough to  
17 support a finding of possession.

18           "In order to find Jonathan Cobb, David Cobb,  
19 and Darren Macklin guilty of possession of a controlled  
20 substance with the intent to distribute as charged in  
21 Count 2 of the superceding indictment, you must find  
22 that the government proved beyond a reasonable doubt  
23 that the defendants intended to distribute a mixture or  
24 substance containing a controlled substance.

25           "To find the defendant had the intent, you

1 must find that he had in mind or had planned in some  
2 way to deliver or transfer the possession or control of  
3 the controlled substance to someone else.

4 "In determining whether a defendant had the  
5 intent to distribute, you may consider all the facts  
6 and circumstances shown by the evidence presented  
7 including his word and actions.

8 "In determining a defendant's intent to  
9 distribute a controlled substance you may consider  
10 among others the quantity and purity of the controlled  
11 substance, the manner in which the controlled substance  
12 was packaged and the presence or absence of weapons,  
13 large amounts of cash, or equipment used in the  
14 processing or sale of the controlled substance.

15 "You are instructed as a matter of law that  
16 cocaine is a controlled substance, that is some kind of  
17 prohibited drugs. It is solely up to you, however, to  
18 decide whether the government has proved beyond a  
19 reasonable doubt that Jonathan Cobb, David Cobb, and  
20 Darren Macklin possessed with the intent to distribute  
21 a mixture or substance containing cocaine as charged in  
22 Count 2.

23 "To act knowingly as used in the offense  
24 charged means that Jonathan Cobb, David Cobb, and  
25 Darren Macklin were conscious and aware that they were

1 engaged in the acts charged and knew of the surrounding  
2 facts and circumstances that make out the offense.

3 "Knowingly does not require that they knew  
4 that the acts charged and surrounding facts actually  
5 amounted to a crime. To act intentionally as used in  
6 the offense charged means to act deliberately and not  
7 by accident.

8 "Intentionally does not require that the  
9 defendant intended to violate the law. The phrase  
10 knowingly or intentionally as used in the offenses  
11 charged require that the government prove beyond a  
12 reasonable doubt that the defendants knew that they  
13 possessed with the intent to distribute, what they  
14 possessed with the intent to distribute was a  
15 controlled substance.

16 "In addition, the government must also prove  
17 beyond a reasonable doubt that the controlled substance  
18 was, in fact, cocaine. However, as long as you find  
19 that the government proved beyond a reasonable doubt  
20 that the defendants knew that what they possessed was a  
21 controlled substance, you need not find that they knew  
22 that the controlled substance was cocaine as charged in  
23 Count 2.

24 "In deciding whether the defendants acted  
25 knowingly or intentionally, you may consider evidence

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1 about what they said, about what they did or failed to  
2 do, how they acted and all the facts and circumstances  
3 shown by the evidence that may prove what was in their  
4 minds at the time.

5 "Now, on Count 2, a person may guilty of an  
6 offense because he personally committed the offense  
7 himself or because he aided and abetted another person  
8 in committing the offense.

9 "A person who has aided and abetted another  
10 in committing the offense is often called an  
11 accomplice. The person whom the complice aids and abets  
12 is also known as the principal.

13 "In this case the government alleges that  
14 Jonathan Cobb, David Cobb, and Darren Macklin aided and  
15 abetted the possession of a controlled substance with  
16 the intent to distribute as charged in Count 2.

17 "In order to find each defendant guilty of  
18 these offenses because he or they aided or abetted in  
19 committing these offenses, you must find that the  
20 government proved beyond a reasonable doubt each of the  
21 following four requirements.

22 "First, that the principal committed the  
23 offense charged by committing each of the elements of  
24 the offenses charged as I have explained to you in  
25 these instructions.

1                 "Second, that the defendants knew that the  
2 offense charged was going to be committed or was being  
3 committed by the principal. Three, that the defendants  
4 did some act for the purpose of aiding, assisting,  
5 soliciting, facilitating or encouraging the principal  
6 in committing the offense and with the intent that the  
7 principal commit the offense.

8                 "Fourth, that the defendant acted in some  
9 way, aid, assist, facilitate, or encourage the  
10 principal to commit the offense. The defendants' acts  
11 need not themselves be against the law. Evidence that  
12 a defendant was merely present during the commission of  
13 the offense is not enough for you to find them guilty  
14 as an aider and abetter.

15                 "In addition, if the evidence shows that the  
16 defendant knew that the offense was being committed or  
17 was about to be committed but does not also prove  
18 beyond a reasonable doubt that it was the defendant's  
19 intents and purpose to aid, assist, encourage or  
20 facilitate or otherwise associate himself with the  
21 offense, you may not find the defendant guilty of the  
22 offense as an aider and abetter.

23                 "The government must prove beyond a  
24 reasonable doubt that the defendant in some way  
25 participated in the offense committed by the principal

1 as something the defendant wished to bring about and to  
2 make successful."

3 That completes my instructions on Count 2. So  
4 with that in mind, please return to the juryroom and  
5 continue your deliberations.

6 (Jury out, 1:43 p.m.)

7 THE COURT: Okay. We will stand in recess.

8 (Recess, 1:43 p.m. to 2:58 p.m.)

9 THE COURT: Please be seated. Okay. The  
10 jury indicated that they have reached a verdict.  
11 Please bring the jury in.

12 (Jury in, 3:00 p.m.)

13 THE COURT: Okay. Please be seated. Would the  
14 foreperson, please stand. Juror number two, has the  
15 jury reached a unanimous verdict?

16 JURY FOREMAN: Yes, they have, Your Honor.

17 THE COURT: Okay. Would you hand the verdict  
18 sheet to Mr. Vance and please be seated for a moment  
19 while I inspect it for regularity.

20 (Pause in proceedings.)

21 THE COURT: Would you hand up the verdict  
22 sheets to the foreperson, would you please stand, sir?  
23 Members of the jury, Mr. Vance will ask the questions  
24 and the foreperson will speak for you, please pay  
25 attention to the verdict because I will then ask you

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1 whether you agree with the verdict as read. So, let's  
2 begin.

3 COURTROOM DEPUTY: In the United States of  
4 America versus Jonathan Cobb, Criminal Action Number  
5 09-733-01 as to Count 1 of the superceding indictment  
6 charging conspiracy to distribute cocaine from  
7 beginning in or about August 2009 and continuing  
8 through on or about October 20th, 2009, how do you find  
9 the defendant, Jonathan Cobb, guilty or not guilty?

10 JURY FOREMAN: Guilty.

11 COURTROOM DEPUTY: As to jury interrogatory  
12 number one, do you unanimously agree by proof beyond  
13 reasonable doubt that the quantity of the mixture or  
14 substance containing a detectable amount of cocaine  
15 which was involved in the conspiracy was five hundred  
16 grams or more?

17 JURY FOREMAN: Yes.

18 COURTROOM DEPUTY: As to Count 2 of the  
19 superceding indictment, possession of cocaine with  
20 intent to distribute on or about October 20th, 2009,  
21 how do you find defendant, Jonathan Cobb, guilty or not  
22 guilty?

23 JURY FOREMAN: Guilty.

24 THE COURT: As to jury interrogatory number  
25 two, do you unanimously agree by proof beyond a

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1 reasonable doubt that the quantity of the mixture or  
2 substance containing a detectable amount of cocaine  
3 which was possessed with intent to distribute was five  
4 hundred grams or more?

5 JURY FOREMAN: Yes.

6 COURTROOM DEPUTY: In the United States of  
7 America versus David Cobb, Criminal Action Number  
8 09-733-02, as to Count 1 of the superceding indictment  
9 charging conspiracy to distribute cocaine from  
10 beginning in or about August 2009 and continuing  
11 through on or about October 20th, 2009, how do you find  
12 defendant, David Cobb, guilty or not guilty?

13 JURY FOREMAN: Guilty.

14 COURTROOM DEPUTY: As to jury interrogatory  
15 number one, do you unanimously agree by proof beyond a  
16 reasonable doubt that the quantity of the mixture or  
17 substance containing a detectable amount of cocaine  
18 which was involved in the conspiracy was five hundred  
19 grams or more?

20 JURY FOREMAN: Yes.

21 COURTROOM DEPUTY: As to Count 2 of the  
22 superceding indictment, possessing cocaine with intent  
23 to distribute on or about October 20th, 2009, how do  
24 you find defendant, David Cobb, guilty or not guilty?

25 JURY FOREMAN: Guilty.

1                   COURTROOM DEPUTY: As to jury interrogatory  
2 number one, do you unanimously agree by proof beyond a  
3 reasonable doubt that the quantity of the mixture or  
4 substance containing a detectable amount of cocaine was  
5 possessed with intent to distribute five hundred grams  
6 or more?

7                   JURY FOREMAN: Yes.

8                   COURTROOM DEPUTY: In the United States of  
9 America versus Darren Macklin, Criminal Action Number  
10 09-733-02, as to Count 1 of the superceding indictment  
11 charging conspiracy to distribute cocaine from  
12 beginning in or about August 2009 and continuing  
13 through on or about October 20th, 2009, how do you find  
14 defendant, Darren Macklin, guilty or not guilty?

15                  JURY FOREMAN: Not guilty.

16                  COURTROOM DEPUTY: As to Count 2 of the  
17 superceding indictment, possessing cocaine with intent  
18 to distribute on or about October 20th, 2009, how do  
19 you find defendant, Darren Macklin, guilty or not  
20 guilty?

21                  JURY FOREMAN: Not guilty.

22                  THE COURT: Please hand the verdict sheet to  
23 the deputy. Members of the jury, I am going to now  
24 verify anonymity. I'm going to ask you whether you  
25 agree with the verdict that is read, your suggested

1 answer should be yes or no. juror number one, do you  
2 agree with the verdict as read?

3 JUROR 1: Yes.

4 THE COURT: Juror number two, do you agree  
5 with the verdict as read?

6 JUROR 2: Yes.

7 THE COURT: Juror number three, do you agree  
8 with the verdict as read?

9 JUROR 3: Yes.

10 THE COURT: Juror number four, do you agree  
11 with the verdict as read?

12 JUROR 4: Yes.

13 THE COURT: Juror number five, do you agree  
14 with the verdict as read?

15 JUROR 5: Yes.

16 THE COURT: Juror number six, do you agree  
17 with the verdict as read?

18 JUROR 6: Yes.

19 THE COURT: Juror number seven, do you agree  
20 with the verdict as read?

21 JUROR 7: Yes.

22 THE COURT: Juror number eight, do you agree  
23 with the verdict as read?

24 JUROR 8: Yes.

25 THE COURT: Juror number nine, do you agree

1 with the verdict as read?

2 JUROR 9: Yes.

3 THE COURT: Juror number ten, do you agree

4 with the verdict as read?

5 JUROR 10: Yes.

6 THE COURT: Juror number eleven, do you agree

7 with the verdict as read?

8 JUROR 11: Yes.

9 THE COURT: Juror number twelve, do you agree

10 with the verdict as read?

11 JUROR 12: Yes.

12 THE COURT: Polling of the jury having

13 verified anonymity I direct the clerk to file and

14 record the verdict.

15 Members of the jury, we want to thank you

16 again for the hard work that you've done and your

17 cooperation throughout the trial, it has been

18 relatively short but I'm sure it has been a demanding

19 schedule, some of you come a long way.

20 I know you've had to travel to be here, you

21 were here on time, ready to go and accommodated us in

22 every way. So, we want to thank you for that, hope

23 that you will walk away with an appreciation of the

24 criminal justice system and how it works in the federal

25 court.

1           If you have any questions or any logistics,  
2 Mr. Vance will be able to assist you with that. Other  
3 than that, your jury service has been completed, we  
4 will collect your notes and those will be destroyed.

5           At this time I thank you again and have a  
6 good afternoon and a good weekend. Thank you.

7           (Jury out, 3:07 p.m.)

8           THE COURT: Okay. Please be seated. First,  
9 we will enter an order providing for the filing of  
10 post-trial motions and according to the national rules,  
11 you will have fourteen days to do that. If you need  
12 additional time, you may request that additional time  
13 before the expiration of the fourteen days.

14           Number two, each of the parties in this case  
15 are charged with retaining possession of any exhibits  
16 that were entered into evidence in the case, as  
17 officers of the Court.

18           In the event that those exhibits are needed  
19 for post-trial motions and/or appeal. So, each of you  
20 is personally charged with preserving and protecting  
21 the integrity of the exhibits.

22           Number three, the Court has set September  
23 23rd at 9:00 a.m. in courtroom 11A, or in such other  
24 courtroom as may be designated on that day for the  
25 sentencing of Jonathan Cobb.

1                   The Court has set September 29th, 2010 at  
2 9:00 a.m. in courtroom 11A, or in such other courtroom  
3 as may be designated on that day for the sentencing of  
4 David Cobb.

5                   The Court will order a presentence  
6 investigation report be conducted by the probation  
7 office and the report be submitted to the Court in  
8 accordance with the local rules and the deadlines  
9 provided for in the local rules.

10                  Anything else? Is Mr. Macklin subject to a  
11 detainer or may he be released at this time?

12                  MS. GRASSO: There is nothing else holding  
13 him that I'm aware of.

14                  MS. MARSTON: Actually, I think there is  
15 something holding him. I was told he was a fugitive at  
16 the time.

17                  THE COURT: Okay.

18                  MS. MARSTON: So we do believe there is a  
19 detainer in place, a state detainer.

20                  (Pause in proceedings.)

21                  THE COURT: Just a minute. This is what we  
22 are going to do. The two of you will meet immediately  
23 after trial is dismissed and I'll be in chambers and if  
24 the appropriate order needs to be entered I will do so  
25 immediately following the proceedings.

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1 MS. GRASSO: I appreciate that, Your Honor.

2 MS. MARSTON: That is fine.

3 THE COURT: So, at this time, is there  
4 anything else? If not the trial is adjourned. Thank  
5 you, counsel, defendants are remanded.

6 MS. MARSTON: Your Honor, are we allowed to  
7 talk to the jury if the jury wishes to talk to us?

8 THE COURT: You may talk to the jury,  
9 exactly, and I did not tell them that they are able to  
10 do that, but you may communicate with the jury.

11 MS. MARSTON: Thank you, Your Honor.

12 (Proceedings adjourned, 3:10 p.m.)

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6 CERTIFICATION  
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8 I, Jeff Nathanson, do hereby certify that the  
9 foregoing is a true and correct transcript from the  
10 electronic sound recordings of the proceedings in the  
11 above-captioned matter.

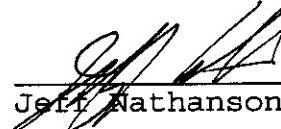
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1-24-11

15 Date

  
Jeff Nathanson

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